CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS

- -x

PEOPLE OF THE STATE OF NEW YORK

-against-

RAPHAEL DELGADO

B 222, 2228 defendant

- -x

JULES D. ZALON, being duly sworn, deposes and says:
That he is an attorney-at-law, and one of hte attorneys involved in the defense of the said Raphael Delgado. That on or about May 18, 1964, a bail forfeiture was ordered by the court in Prt I-B of the Criminal Court for the defendant's failure to appear.

That Mr. Delgado appeared subsequently before the said part of the Criminal Court on or about May 25, and has thereafter appeared on every adjourned date, including the present day.

That, upon information and belief, the bail forfeiture was ordered reinstated on May 25, 1964. However, as was thereafter discovered by your deponent, a number of other bail forfeitures have similarly been ordered reinstated, but no notice of the reinstatements has been transmitted to the District Attorney's office in charge of bail forfeitures; and these numerous bonds are therefore presantly in the process of being entered for judgment, notwithstanding the subsequent reinstatements.

That, specifically with regard to the present defendant, the case is presently before the United States Circuit Court of Appeals for the Second Circuit.

That, on request to examine the defendant's complaint, your deponent was told by Mr. Julius Weinstock, Clerk to the Criminal Court, Part I-B, that the papers were taken to the office of the District Attorney's Appeals Bureau; since Mr. Ehrlich is not in his office today, and the other person in

his office acquainted with these matters is also out of the office today, thereby frustrating your deponent's desire to make certain that the bail forfeiture has, in fact, been reinstated, your deponent comes before this Court without the papers necessary to prove his belief.

That, inasmuch as the bail forfeitures are about to be entered for judgment, this procedural hurdle will result in a grave injustice and hardship on the defendant, despite the defendant's constant appearance before this Court.

WHEREFORE, your deponent respectfully moves this Court to stay the entering of the bail forfeiture for judgment, and order the Clerk of this Court to transmit this notice to the appropriate office of the District Attorney, pending the examination of the complaint against the defendant, and until the papers may once again be placed before this Court.

JULES D. ZALON

Sworn to before me this
10th day of September, 1964

James E Brown

Notary Public

JAMES E. BROWN
NOTARY PUBLIC, State of New York
No. 41-5478885 Queens County
Cert. filed in
Term Expires March 30, 1965

Withdraw 9/29

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS CRIMINAL TERM

PEOPLE OF THE STATE OF NEW YORK

Plaintiff,

- against -

V. COLEMAN

- for -

RONALD COY

Principal

Dept. of Finance # 46196-'64 (Treasurer's Receipt)

SIR:

PLEASE TAKE NOTICE that upon the annexed affidavit of STEPHEN M. NAGLER, ESQ., duly sworn to the 7th day of September, 1965, THAT the undersigned will move this Court at Criminal Term, Part 1, of this Court, at the Courthouse, in the Supreme Court Building, 125-01 Queens Blvd., Kew Gardens, Queens, New York, on the 8th day of September, 1965, at ten o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for an order rescinding the forefeiture of bail and vacating and setting aside a judgment in the amount of $50, resulting from bail forfeiture entered in office of the Department of Finance on the 20th day of November, 1964,against V. COLEMAN, as Surety for RONALD COY, Principal, and for such other and further relief as to the Court may seem just and proper.

Dated, Queens County, New York.

September 7, 1965.

Yours, Etc.

STEPHEN M. NAGLER
Attorney for Surety
Office and Post Office Address
c/o George Schiffer
40 E. 49th Street
New York, New York 10017

TO: Hon. Frank D. O'Connor,Esq.
District Attorney, Queens County
125-05 Hoover Avenue
Kew Gardens, Queens
New York

Withdraw 9/29

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS CRIMINAL TERM

.....

PEOPLE OF THE STATE OF NEW YORK

Plaintiff,

- against -

V. COLEMAN

- for -

RONALD COY

Principal

Dept. of Finance # 46196-'64

(Treasurer's Receipt)

.....

SIR:

PLEASE TAKE NOTICE that upon the annexed affidavit of STEPHEN M. NAGLER, ESQ., duly sworn to the 7th day of September, 1965, THAT the undersigned will move this Court at Criminal Term, Part 1, of this Court, at the Courthouse, in the Supreme Court Building, 125-01 Queens Blvd., Kew Gardens, Queens, New York, on the 8th day of September, 1965, at ten o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for an order rescinding the forefeiture of bail and vacating and setting aside a judgment in the amount of $50, resulting from bail forfeiture entered in office of the Department of Finance on the 20th day of November, 1964,against V. COLEMAN, as Surety for RONALD COY, Principal, and for such other and further relief as to the Court may seem just and proper.

Dated, Queens County, New York.

September 7, 1965.

Yours, Etc.

STEPHEN M. NAGLER
Attorney for Surety
Office and Post Office Address
c/o George Schiffer
40 E. 49th Street
New York, New York 10017

TO: Hon. Frank D. O'Connor,Esq.
District Attorney, Queens County
125-05 Hoover Avenue
Kew Gardens, Queens
New York

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS CRIMINAL TERM

.....

THE PEOPLE OF THE STATE OF NEW YORK

Plaintiff,

- against -

V. COLEMAN,

Surety,

- for -

RONALD COY,

Principal.

.....

STATE OF NEW YORK
COUNTY OF QUEENS ss;

STEPHEN M. NAGLER, being duly sworn deposes and says, THAT I am the agent for V. COLEMAN, the surety herein, and as such agent am fully familiar with facts herein.

THAT heretofore, and on the 24th day of April 1964, V. COLEMAN entered into a recognizance in the sum of Fifty ($50) Dollars, wherein RONALD COY was the principal, and V. COLEMAN was the surety, in favor of The People of The State of New York, for the appearance of said principal to answer a charge of violation of § 722 (Penal L.).

THAT thereafter, on the 10th day of September, 1965, the case was called in The Criminal Court, held in and for the county of Queens, and the said principal not appearing the said recognizance was forfeited.

THAT the principal's failure to appear at the Court appointed time was neither wilfull nor deliberate and the people have not lost any rights as a result of the non-appearance.

THAT, on information and belief, RONALD COY was unaware that he was required to appear on the 10th of September and he did in fact appear on the 2nd day of October, 1964 at which time bail was reinstated.

THAT on or about the 25th of June, 1964, a petition for removal of this case to the United States District Court for the Eastern District of New York had been filed and on the day of the forfeiture, this case had in fact been removed and was not properly within the jurisdiction of the Criminal Court of the City of New York.

THAT it is readily apparent that the principal's absence at the appointed time has been adequately explained and by virtue of the special circumstances existing herein, a granting of the relief sought is fully warranted.

THAT not more than one year has elapsed since the forfeiture was declared.

THAT no previous application for the relief prayed for herein has been made.

Wherefore, deponent respectfully prays that an order be entered intthe above entitled action releasing V. COLEMAN from all its obligations under the cash bail in connection with the charge of §§ 722 Penal Law against the said principal and that this court remit the forfeiture of the undertaking filed by the said company, and vacating and setting aside and discharging the judgment in the sum of Fifty ($50) Dollars, in the office of the Department of Finance, entered on the 20th day of November, 1965, in favor of The People of The State of New York, against V. COLEMAN, as surety and RONALD COY as principal, upon receipt by him of the order of the

court, and for such other and further relief as to the court may seem just and proper in the premises.

Sworn to before me
this 7th day of September, 1965.

RITA L. CARRINGTON
NOTARY PUBLIC, State of New York
No. 41-0581325
Qualified in Queens County
Cert. filed in New York County
Term Expires March 30, 1967

RECEIVED
DISTRICT ATTORNEY QUEENS COUNTY
1965 SEP -7 PM 3:19
DISTRICT ATTORNEY

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS CRIMINAL TERM

. . . . . .

PEOPLE OF THE STATE OF NEW YORK
Plaintiff,

-against-

THE STUYVESANT INSURANCE COMPANY

County Clerk
Index # 12828-64

-for-

RONALD COY'

Principal.

. . . . . .

SIR:

PLEASE TAKE NOTICE that upon the annexed affidavit of STEPHEN M. NAGLER, ESQ., duly sworn to the *3rd* day of *September*, 1965, THAT the undersigned will move this Court at Criminal Term, Part 1, of this Court, at the Courthouse, in the Supreme Court Building, 125-01 Queens Blvd., Kew Gardens, Queens, New York, on the *8th* day of *September*, 1965, at ten o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for an order rescinding the forefeiture of bail and vacating and setting aside a judgment in the amount of $500, resulting from bail forfeiture entered in office of the Clerk of Queens County on the *25th* day of *November*, 19*64*, against THE STUYVESANT INSURANCE COMPANY, as Surety for *Ronald Coy*, Principal, and for such other and further relief as to the Court may seem just and proper.

Dated, Queens County, New York.
September 3rd, 1965

Yours, Etc.

STEPHEN M. NAGLER
Attorney for Surety
Office and Post Office Address
c/o George Schiffer, 40 E.49 Street
New York
Bronx, New York *10017*

TO: Frank D. O'Connor, Esq.
District Attorney, Queens County
126-05 Hoover Avenue
Kew Gardens, Queens
New York

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF QUEENS: CRIMINAL TERM

.....X

THE PEOPLE OF THE STATE OF NEW YORK
Plaintiff,

-against-

THE STUYVESANT INSURANCE COMPANY
Surety,

-- for --

RONALD COY,
Principal.

.....X

STATE OF NEW YORK ss;
COUNTY OF QUEENS

STEPHEN M. NAGLER, being duly sworn deposes and says, THAT I am the agent for The Stuyvesant Insurance Company, the surety herein, and as such agent am fully familiar with the facts herein.

THAT heretofore, and on the *22nd* day of *April* 19*64*, The Stuyvesant Insurance Company entered into a recognizance in the sum of FIVE HUNDRED (500) DOLLARS, wherein *Ronald Coy* was the principal, and The Stuyvesant Insurance Company was the surety, in favor of The People of The State of New York, for the appearance of said principal to answer a charge of violation of § *1851 Penal L.*

THAT thereafter, on the *10th* day of *September* 19*64*, the case was called in The Criminal Court, held in and for the county of Queens, and the said principal not appearing the said recognizance was forfeited.

THAT the principal's failure to appear at the court appointed time was neither wilfull nor deliberate and the people have not lost any rights as a result of the non-appearance.

THAT on information and belief, Ronald Coy was unaware that he was required to appear on the 10th of September and he did in fact appear on the 2nd day of October, 1964 at which time bail was reinstated.

THAT on or about the 25th of June, 1964, a petition for removal of this case to the United States District Court for the Eastern District of New York had been filed and on the day of the forfeiture, this case had in fact been removed and was not properly within the jurisdiction of the Criminal Court of The City of New York.

THAT it is readily apparent that the principal's absence at the appointed time has been adequately explained and by virtue of the special circumstances existing herein, a granting of the relief sought is fully warranted.

THAT not more than one year has elapsed since the forfeiture was declared.

THAT no previous application for the relief prayed for herein has been made.

Wherefore, deponent respectfully prays that an order be entered in the above entitled action releasing The Stuyvesant Insurance Company from all its obligations under the bail bond in connection with the charge of *§ 1851, Penal Law,* against the said principal and that this court remit the forfeiture of the undertaking filed by the said company, and vacating and setting aside and discharging the judgment in the sum of *Five-Hundred (500)* DOLLARS, in the office of the Clerk of *Queens* County, entered on the *25th* day of *November,* 1964 , in favor of The People of The State of New York, against The Stuyvesant Insurance Company, as surety and *Ronald Coy* as principal,

upon receipt by him of the or der of the court, and for such other and further relief as to the court may seem just and proper in the premises.

S/L.

Sworn to before me

this 3 day of Sept. 1965

DOROTHY F. BENC
Notary Public, State of New York
No. 41-0236475
Qualified in Queens County
Term Expires March 30, 1967

RECEIVED
OCT 3 11 3 PM 1965
FEDERAL BUREAU OF INVESTIGATION

At a Criminal Term of the Supreme Court held in and for the County of Queens at the Courthouse at 135-01 Queens Boulevard, County of Queens of the City of New York, State of New York, on the 27th day of August, 1965.

PRESENT: Hon. **Albert H. Roach** .....
Justice, Supreme Court

People of the State of New York, -against- Stuyvesant Insurance Company, Surety -for- ....**Gilbert Banks** ..... Principal	**County Clerk** **Index # 12847-64** **S.P. No. 655**

Stuyvesant Insurance Company, the surety above named having moved this Court for an order vacating the forfeiture of the undertaking executed by **Gilbert Banks** , as principal and said Stuyvesant Insurance Company, as surety entered in the Office of the Clerk of Queens County on the **25th** day of **November** , 1964, and said motion having duly come on to be heard.

Now on reading and filing the notice of motion herein dated the **11th** day of **June** 1965, together with proof of due service thereof, the affidavit of Stephen M. Nagler duly sworn to the **11th** day of **June** , 1965, and on the consent of the District Attorney of the County of Queens stating that the People of the State of New York have lost no rights and after hearing Stephen M. Nagler, attorney for the above named surety in favor of said motion and Frank O'Connor, District Attorney of Queens County by Lawrence McGrath, Assistant District Attorney, appearing but not opposing, and due deliberation having been had thereon, it is, on motion of Stephen M. Nagler, attorney for the surety,

ORDERED that the said motion be and the same hereby is granted, and it is further

ORDERED that the forfeiture of the undertaking of bail heretofore executed by **Gilbert Banks** as principal and Stuyvesant Insurance Company as surety, which said forfeiture was entered on the **22nd** day of **June**, 1964, be and the same hereby is in all respects vacated and set aside, and it is further

AHB
J.S.C

ORDERED that the judgment in the sum of $1000.00 entered upon said undertaking so forfeited in the office of the Clerk of the County of Queens on **November 25th**, 1964, be and the same hereby is vacated and the Clerk of the County of Queens upon being served with a certified copy of this order is hereby directed to make a note of the vacation of said judgment on all indices and records of said judgment contained in his office referring to this order, and it is further

ORDERED that a copy of this order with notice of entry thereof be served on the District Attorney of Queens County with 10 days after entry thereof.

Enter

AHB

Justice, Supreme Court

★GRANTED
AUG 27 1965
P.L
CLERK

At a Criminal Term of the Supreme Court held in and for the County of Queens at the Courthouse at 135-01 Queens Boulevard, County of Queens of the City of New York, State of New York, on the 27th day of August, 1965.

PRESENT: Hon. Albert H. Bosch
Justice, Supreme Court

People of the State of New York,	County Clerk
-against-	Index # 12,845-64
Stuyvesant Insurance Company, Surety	S.P. No. 625
-for-	
Gilbert Banks Principal	

Stuyvesant Insurance Company, the surety above named having moved this Court for an order vacating the forfeiture of the undertaking executed by Gilbert Banks, as principal and said Stuyvesant Insurance Company, as surety entered in the Office of the Clerk of Queens County on the 25th day of November, 1964, and said motion having duly come on to be heard.

Now on reading and filing the notice of motion herein dated the 3rd day of May, 1965, together with proof of due service thereof, the affidavit of Stephen M. Nadler duly sworn to the 3rd day of May, 1965, and on the consent of the District Attorney of the County of Queens stating that the People of the State of New York have lost no rights and after hearing Stephen M. Nadler, attorney for the above named surety in favor of said motion and Frank O'Connor, District Attorney of Queens County by Lawrence McGrath, Assistant District Attorney, appearing but not opposing, and due deliberation having been had thereon, it is, on motion of Stephen M. Nadler, attorney for the surety,

ORDERED that the said motion be and the same hereby is granted, and it is further

ORDERED that the forfeiture of the undertaking of bail heretofore executed by Gilbert Banks as principal and Stuyvesant Insurance Company as surety, which said forfeiture was entered on the 22nd day of June , 1964, be and the same hereby is in all respects vacated and set aside, and it is further

ORDERED that the judgment in the sum of $500.00 entered upon said undertaking so forfeited in the office of the Clerk of the County of Queens on November 25th , 1964, be and the same hereby is vacated and the Clerk of the County of Queens upon being served with a certified copy of this order is hereby directed to make a note of the vacation of said judgment on all indices and records of said judgment contained in his office referring to this order, and it is further

ORDERED that a copy of this order with notice of entry thereof be served on the District Attorney of Queens County with 10 days after entry thereof.

Enter

★GRANTED
AUG 27 1965
CLERK

Justice, Supreme Court

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS CRIMINAL TERM

. . . . . .

PEOPLE OF THE STATE OF NEW YORK
Plaintiff,

-against-

THE STUYVESANT INSURANCE COMPANY

County Clerk
Index # 12812

-for-

LOUCILLE PLUMMER (PLUMMES)
Principal.

2

. . . . . .

SIR:

PLEASE TAKE NOTICE that upon the annexed affidavit of STEPHEN M. NAGLER, ESQ., duly sworn to the 3rd day of May, 1965, THAT the undersigned will move this Court at Criminal Term, Part 1, of this Court, at the Courthouse, in the Supreme Court Building, 125-01 Queens Blvd., Kew Gardens, Queens, New York, on the 10th day of May, 1965, at ten o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for an order rescinding the forefeiture of bail and vacating and setting aside a judgment in the amount of $500, resulting from bail forfeiture entered in office of the Clerk of Queens County on the 25th day of May, 1964, against THE STUYVESANT INSURANCE COMPANY, as Surety for LOUCILLE PLUMMER (PLUMMES) Principal, and for such other and further relief as to the Court may seem just and proper.

Dated, Queens County, New York.

May 3rd, 1965

Yours, Etc.

STEPHEN M. NAGLER
Attorney for Surety
Office and Post Office Address
875 Brook Avenue
Bronx 51, New York

TO: Frank D. O'Connor, Esq.
District Attorney, Queens County
126-05 Hoover Avenue
Kew Gardens, Queens
New York

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF QUEENS: CRIMINAL TERM

.....X

THE PEOPLE OF THE STATE OF NEW YORK
Plaintiff,

-against-

THE STUYVESANT INSURANCE COMPANY
Surety,

-- for --

LOUCILLE PLUSSER (PLUMMES)
Principal.

.....X

STATE OF NEW YORK ss;
COUNTY OF QUEENS

STEPHEN M. NAGLER, being duly sworn deposes and says, THAT I am the agent for The Stuyvesant Insurance Company, the surety herein, and as such agent am fully familiar with the facts herein.

THAT heretofore, and on the 22nd day of April 1964, The Stuyvesant Insurance Company entered into a recognizance in the sum of FIVE HUNDRED (500) DOLLARS, wherein LOUCILLE PLUSSER (PLUMMES) was the principal, and The Stuyvesant Insurance Company was the surety, in favor of The People of The State of New York, for the appearance of said principal to answer a charge of violation of § 1851

THAT thereafter, on the 25th day of May 1964, the case was called in The Criminal Court, held in and for the county of Queens, and the said principal not appearing the said recognizance was forfeited.

THAT the principal's failure to appear at the court appointed time was neither wilfull nor deliberate and the people have not lost any rights as a result of the non-appearance.

THAT LOUCILLE PLUSSER was in St. Augustine, Florida, on May 25th, 1964 and was not duly notified that she was required to appear in court on that day.

THAT the proceedings against LOUCILLE PLUSSER were removed to the United States District Court for the Eastern District of New York where they are now pending.

THAT it is readily apparent that the principal's absence at the appointed time has been adequately explained and by virtue of the special circumstances existing herein, a granting of the relief sought is fully warranted.

THAT not more than one year has elapsed since the forfeiture was declared.

THAT no previous application for the relief prayed for herein has been made.

Wherefore, deponent respectfully prays that an order be entered in the above entitled action releasing The Stuyvesant Insurance Company from all its obligations under the bail bond in connection with the charge of $ 1851 , against the said principal and that this court remit the forfeiture of the undertaking filed by the said company, and vacating and setting aside and discharging the judgment in the sum of FIVE HUNDRED ($500.00) DOLLARS, in the office of the Clerk of Queens County, entered on the 25th day of November, 19 64 , in favor of The People of The State of New York, against The Stuyvesant Insurance Company, as surety and LOUCILLE PLUSSER as principal,

upon receipt by him of the or der of the court, and for such other and further relief as to the court may seem just and proper in the premises.

_____

Sworn to before me

this day of 19

_____

1 + 3 of each (other set 204-66)

At a Criminal Term of the Supreme Court held in and for the County of Queens at the Courthouse at 135-01 Queens Boulevard, County of Queens of the City of New York, State of New York, on the day of , 1965.

PRESENT: Hon. EDWARD THOMPSON ~~[illegible]~~
Justice, Supreme Court

People of the State of New York,

-against-

Stuyvesant Insurance Company,
Surety

-for-

~~MELVIN OWENS~~ JEREMIAH TEHON
Principal

Index No. ~~5360-64~~ 205-'66

Stuyvesant Insurance Company, the surety above named having moved this Court for an order vacating the forfeiture of the undertaking executed by ~~Melvin Owens~~ JEREMIAH TEHON, as principal and said Stuyvesant Insurance Company, as surety entered in the Office of the Clerk of Queens County on the ~~18th~~ 11TH day of ~~June~~ JANUARY, 196~~4~~ 6, and said motion having duly come on to be heard.

Now on reading and filing the notice of motion herein dated the ~~28th~~ 6TH day of ~~April~~ December, 196~~5~~ 6, together with proof of due service thereof, the affidavit of Stephen M. Nagler duly sworn to the ~~28th~~ 6TH day of ~~April~~ December, 196~~5~~ 6, and on the consent of the District Attorney of the County of Queens stating that the People of the State of New York have lost no rights and after hearing Stephen M. Nagler, attorney for the above named surety in favor of said motion and ~~Frank O'Connor~~ HON. NAT HENTEL, District Attorney of Queens County by Lawrence McGrath, Assistant District Attorney, appearing but not opposing, and due deliberation having been had thereon, it is, on motion of Stephen M. Nagler, attorney for the surety,

ORDERED that the said motion be and the same hereby is granted, and it is further

ORDERED that the forfeiture of the undertaking of bail heretofore executed by ~~Melvin Owens~~ JEREMIAH TEHON as principal and Stuyvesant Insurance Company as surety, which said forfeiture was entered on ~~the 5th~~ 14TH day of ~~May~~ December, 1965, be and the same hereby is in all respects vacated and set aside, and it is further

ORDERED that the judgment in the sum of $500.00 entered upon said undertaking so forfeited in the office of the Clerk of the County of Queens on ~~June 18th~~ JANUARY 11TH, 1966, be and the same hereby is vacated and the Clerk of the County of Queens upon being served with a certified copy of this order is hereby directed to make a note of the vacation of said judgment on all indices and records of said judgment contained in his office referring to this order, and it is further

ORDERED that a copy of this order with notice of entry thereof be served on the District Attorney of Queens County with 10 days after entry thereof.

Enter

_____

Justice, Supreme Court

At a Criminal Term of the Supreme Court held in and for the County of Queens at the Courthouse at 135-01 Queens Boulevard, County of Queens of the City of New York, State of New York, on the 5th day of August, 1965

PRESENT: Hon. J. IRWIN SHAPIRO ~~Albert H. Bosch~~
Justice, Supreme Court

People of the State of New York,

-against-

Stuyvesant Insurance Company,
Surety

-for-

~~Raphael A. Delgado,~~ JIMMIE JONES
Principal

County Clerk

~~Index # 12,888-64~~

~~S.P. No. 664~~
INDEX # 3117-66

Stuyvesant Insurance Company, the surety above named having moved this Court for an order vacating the forfeiture of the undertaking executed by ~~Raphael A. Delgado,~~ JIMMIE JONES, as principal and said Stuyvesant Insurance Company, as surety entered in the Office of the Clerk of Queens County on the ~~25th~~ 18 day of ~~November~~ APRIL, 196~~4~~ 6, and said motion having duly come on to be heard.

Now on reading and filing the notice of motion herein dated the ~~18th~~ 16th day of ~~June~~ December 196~~5~~ 6, together with proof of due service thereof, the affidavit of Stephen M. Nadler duly sworn to the ~~18th~~ 16th day of ~~June~~ December, 196~~5~~ 6, and on the consent of the District Attorney of the County of Queens stating that the People of the State of New York have lost no rights and after hearing Stephen M. Nadler, attorney for the abovr named surety in favor of said motion and ~~Frank O'Connor,~~ HON. THOMAS J. MACKELL, District Attorney of Queens County by Lawrence McGrath, Assistany District Attorney, appearing but not opposing, and due deliberation having been had thereon, it is, on motion of Stephen M. Nadler, attorney for the surety,

ORDERED that the said motion be and the same hereby is granted, and it is further

ORDERED that the forfeiture of the undertaking of bail heretofore executed by ~~Raphael A. Delgado~~ Jimmie Jones as principal and Stuyvesant Insurance Company as surety, which said forfeiture was entered on the ~~18th~~ 7th day of ~~May~~ February, 196~~4~~6, be and the same hereby is in all respects vacated and set aside, and it is further

ORDERED that the judgment entered upon said undertaking so forfeited in the office of the Clerk of the County of Queens on ~~November 25th~~ APRIL 18th, 196~~4~~6, be and the same hereby is vacated and the Clerk of the County of Queens upon being served with a certified copy of this order is hereby directed to make a note of the vacation of said judgment on all indices and records of said judgment contained in his office referring to this order, and it is further

ORDERED that a copy of this order with notice of entry thereof be served on the District Attorney of Queens County within 10 days after entry thereof.

Enter

Justice, Supreme Court

★GRANTED
AUG 27 1965
CLERK

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK SPECIAL TERM - PART 1

.....

PEOPLE OF THE STATE OF NEW YORK

Plaintiff,

-against-

THE STUYVESANT INSURANCE COMPANY

-for-

ELAINE BIBULD,

Principal.

INDEX # 16614-65

.....

SIR:

PLEASE TAKE NOTICE that upon the annexed affidavits of STEPHEN M. NAGLER and CARL RACHLIN, ESQ. duly sworn to the 25th day of October, 1965, THAT the undersigned will move this Court at Special Term, Part 1, of this Court, at the Courthouse, in the Supreme Court Building, 60 Centre Street, Borough of Manhattan, New York, on the 28th day of October, 1965, at ten o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for an order rescinding the forefeiture of bail and vacating and setting aside a judgment in the amount of $500, resulting from bail forefeiture entered in office of the Clerk of New York County on the 30th day of November, 1964, against THE STUYVESANT INSURANCE COMPANY, as Surety for ELAINE BIBULD, Principal, and for such other and further relief as to the Court may seem just and proper.

Dated, New York County, New York.
October 26th, 1965

Yours, Etc.
STEPHEN M. NAGLER
Attorney for Surety
Office and Post Office Address
38 Park Row
New York, N.Y. 10038

TO: Hon. Frank Hogan, Esq.
District Attorney, New York County
155 Leonard Street
New York, New York

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK SPECIAL TERM - PART I

.....

THE PEOPLE OF THE STATE OF NEW YORK

Plaintiff,

-against-

THE STUYVESANT INSURANCE COMPANY

Surety,

- for -

ELAINE BIBULD,

Principal

.....X

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS;

STEPHEN M. NAGLER, being duly sworn deposes and says, THAT I am the agent for The Stuyvesant Insurance Company, the surety herein, and as such agent am fully familiar with the facts herein.

THAT heretofore, and on the 27th day of March, 1964 The Stuyvesant Insurance Company entered into a recognizance in the sum of FIVE HUNDRED(500) DOLLARS, wherein ELAINE BIBULD was the principal, and The Stuyvesant Insurance Company was the surety, in favor of The People of the State of New York, for the appearance of said principal to answer a charge of violation of §§ 2031, 2092, and 1851 of the Penal Law.

THAT thereafter, on the 23rd day of October, 1964, the case was called in the Criminal Court, held in and for the county of New York, and the said principal not appearing the said recognizance was forfeited.

THAT the principal's failure to appear at the court appointed time was neither wilfull nor deliberate and the people have not lost any rights as a result of the non-appearance.

THAT ELAINE BIBULD was not aware that her presence was required in Part I-B of the Criminal Court.

THAT it is readily apparent that the principal's absence at the appointed time has been adequately explained and by virtue of the special circumstances existing herein, a granting of the relief sought is fully warranted.

THAT not more than one year has elapsed since the forfeiture was declared.

THAT no previous application for the relief prayed for herein has been made.

Wherefore, deponent sespectfully prays that an order be entered in the above entitled action releasing The Stuyvesant Insurance Company from all its obligations under the bail bond in connection with the charge of §§ 2092, 2036 and 1851, against the said principal and that this court remit the forfeiture of the undertaking filed by the said company, and vacating and setting aside and discharging the judgment in the sum of FIVE HUNDRED (500) DOLLARS, in the office of the Clerk of New York County, entered on the 30th day of November, 1964, in favor the The People of The State of New York, against The Stuyvesant Insurance Company, as surety and [redacted] as principal, upon receipt by him of the order of the court, and for such other and further relief as to the courty may seem just and proper in the premises.

Stephen M. Nagler

STEPHEN M. NAGLER

Sworn to before me
this 26 day of Oct
1965.

Rita L. Carrington

RITA L. CARRINGTON
NOTARY PUBLIC, State of New York
No. 41-0581325
Qualified in Queens County
Cert. filed in New York County
Term Expires March 30, 1967

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK CRIMINAL TERM

.....

PEOPLE OF THE STATE OF NEW YORK

Plaintiff,

- against -

THE STUYVESANT INSURANCE COMPANY

- for -

ELAINE BIBULD, Principal

.....

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS.,

AFFIDAVIT

CARL RACHLIN, being duly sworn, deposes and says:

I am an attorney of law and have an office for the practice of same at 38 Park Row, New York, New York.

This affidavit is made in support of the Motion for Bail Forfeiture Remission for ELAINE BIBULD. I have been advised and truly believe that ELAINE BIBULD did not know that she was to appear in court on October 28, 1964, Criminal Court, borough of Manhattan, Part IB. The forfeiture herein was entered on November 30, 1964 and the case bears the Docket # 2028.

I am further informed that ELAINE BIBULD was misinformed as to the date she was to appear in court and her failure to appear was in no way deliberate but was the result of the misinformation she received.

I, therefore, respectfully request that the Motion for Bail Forfeiture Remission be granted.

Carl Rachlin

CARL RACHLIN, ESQ.

Sworn to before me
this 11th day of Oct
1965.

RITA L. CARRINGTON
NOTARY PUBLIC, State of New York
No. 41-0581325
Qualified in Queens County
Cert. filed in New York County
Term Expires March 30, 1967

MAY 2 3 1966

At a Criminal Term of the Supreme Court held in and for the County of Kings at the Courthouse at the Brooklyn Civic Center, County of Kings of the City of New York, State of New York, on the 19 day of May, 1966.

PRESENT: Hon. Hyman Barshay
Justice, Supreme Court

People of the State of New York,

-against-

Stuyvesant Insurance Company,
Surety,

-for-

Francis Deaveaux (a/k/a/ Francis Deaveares),
Principal.

County Clerk

Index # 3720-65

Stuyvesant Insurance Company, the surety above named having moved this Court for an order vacating the forfeiture of the undertaking executed by Francis Deaveaux (a/k/a/ Francis Deaveares), as principal and said Stuyvesant Insurance Company, as surety entered in the Office of the Clerk of Kings County on the 29th day of March, 1965, and said motion having duly come on to be heard.

Now on reading and filing the notice of motion herein dated the 10TH day of March, 1966, together with proof of due service thereof, the affidavit of Stephen M. Nagler duly sworn to the ____ day of March, 1966, and on the consent of the District Attorney of the County of Kings stating that the People of the State of New York have lost no rights and after hearing Stephen M. Nagler, attorney for the above named surety in favor of said motion and Aaron Koota, District Attorney of Kings County, appearing ~~but not opposing~~ and consenting thereto, and due deliberation having been had thereon, it is, on motion of Stephen M. Nagler, attorney for the surety,

ORDERED that the said motion be and the same hereby is granted, and it is further

ORDERED that the forfeiture of the undertaking of bail heretofore executed by Francis Deaveaux (a/k/a/ Francis Deaveares) as principal and Stuyvesant Insurance Company as surety, which said forfeiture was entered on the 16th day of March, 1965, be and the same hereby is in all respects vacated and set aside, upon payment of $25.00 Costs and it is further

ORDERED that the judgment in the sum of $500.00 entered upon said undertaking so forfeited in the office of the Clerk of the County of Kings on March 29th, 1965, be and the same hereby is vacated and the Clerk of the County of Kings upon being served with a certified copy of this order is hereby directed to make a note of the vacation of said judgment on all indices and records of said judgment contained in his office referring to this order, and it is further

ORDERED that a copy of this order with notice of entry thereof be served on the District Attorney of Kings County with 10 days after entry thereof.

Enter,

HYMAN BARSHAY
Justice, Supreme Court

STATE OF NEW YORK }
COUNTY OF KINGS } S. S.:

I, ROBERT J. CREWS Clerk of the County of Kings and Clerk of the Supreme Court in and for said County (said Court being a Court of Record) DO HEREBY CERTIFY that I have compared the annexed with the original order filed in my office 5/19/66 and that the same is a true transcript thereof and of the whole of such original.

In Testimony Whereof, I have hereunder set my hand and affixed the seal of said County and Court, this 20 day of May 1966

Robert J. Crews
Clerk

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS CRIMINAL TERM

.....

PEOPLE OF THE STATE OF NEW YORK
Plaintiff,

-against-

THE STUYVESANT INSURANCE COMPANY,
Surety,

County Clerk
Index 3900-'65

-for-

ROBERT DELAIN, Principal.

.....

SIR:

PLEASE TAKE NOTICE that upon the annexed affidavit of STEPHEN M. NAGLER, ESQ., duly sworn to the 15th day of March, 1966, THAT the undersigned will move this Court at Criminal Term, Part 1, of this Court, at the Courthouse, in the Supreme Court Building, Brooklyn Civic Center, Brooklyn, New York, on the 23rd day of March, 1966, at ten o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for an order rescinding the forefeiture of bail and vacating and setting aside a judgment in the amount of $1,000, resulting from bail forfeiture entered in office of the Clerk of Kings County on the 1st day of April, 1965, against THE STUYVESANT INSURANCE COMPANY, as Surety for ROBERT DELAIN, Principal, and for such other and further relief as to the Court may seem just and proper.

Dated, New York, New York
March 15th, 1966

Yours, Etc.

STEPHEN M. NAGLER
Attorney for Surety
Office and Post Office Address
c/o C.C.R.E., 38 Park Row - N.Y.,N.Y. 10038

TO: Hon. Aaron Koota
District Attorney Kings County
Municipal Building
Brooklyn, New York

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK CRIMINAL TERM

.....

THE PEOPLE OF THE STATE OF NEW YORK
Plaintiff,

-against-

THE STUYVESANT INSURANCE COMPANY
Surety,

-- for --

ROBERT DELAIN, Principal

.....

STATE OF NEW YORK as.:
COUNTY OF NEW YORK

STEPHEN M. NAGLER, being duly sworn deposes and says, THAT I am the agent for the Stuyvesant Insurance Company, the surety herein, and as such agent am fully familiar with the facts herein.

THAT heretofore, and on the 22nd day of February, 1965, The Stuyvesant Insurance Company entered into a recognizance in the sum of ONE-THOUSAND (1,000) DOLLARS, wherein ROBERT DELAIN was the principal, and The Stuyvesant Insurance Company was the surety, in favor of The People of the State of New York, for the appearance of said principal to answer a charge of violation of Penal Law Section 242 (Felonious assault).

THAT thereafter, on the 26th day of March, 1965, the case was called in The Criminal Court, held in and for the county of Kings, and the said principal not appearing the said recognizance was forfeited.

THAT the principal's failure to appear at the court appointed time was neither wilfull nor deliberate and the people have not lost any rights as a result of the non-appearance.

THAT, on information and belief, the reason for the said non-appearance of ROBERT DELAIN on March 26, 1965, was that he was confined to the Kings Park State Hospital as a patient.

THAT ROBERT DELAIN was unaware that he was required to appear in the Criminal Court in and for the County of Kings and in any event on information and belief was unable for the aforementioned reasons to appear on that date.

THAT subsequent to his release from the hospital, ROBERT DELAIN returned to the Criminal Court and on June 3rd, 1965, the charge against him was discussed.

THAT it is readily apparent that the principal's absence at the appointed time has been adequately explained and by virtue of the special circumstances existing herein, a granting of the relief sought is fully warranted.

THAT not more than one year has elapsed since the forfeiture was declared.

THAT no previous application for the relief prayed for herein has been made.

Wherefore, deponent respectfully prays that an order be entered in the above entitled action releasing The Stuyvesant Insurance Company from all its obligations under the bail bond in connection with the charge of Penal Law Section 242, against the said lprincipal and that this court remit the forfeiture of the undertaking filed by the said company, and vacating and setting aside and discharging the judgment in the sum of ONE-THOUSAND (1,000) DOLLARS, in the office of the Clerk of Kings County, entered on the 1st day of April, 1965, in favor of The People of The State of New York, against the Stuyvesant Insurance Company, as surety and ROBERT DELAIN as principal, upon receipt by him of the order of the

COURT

court and for such other and further relief as to the court may seem just and proper in the premises.

Stephen M. Naples

Sworn to before me
this 15 day of March 1966

Rita L. Carrington

RITA L. CARRINGTON
NOTARY PUBLIC, State of New York
No. 41-0581325
Qualified in Queens County
Cert. filed in New York County
Term Expires March 30, 1967

MAY 23 1966

At a Criminal Term of the Supreme Court held in and for the County of Kings at the Courthouse at the Brooklyn Civic Center, County of Kings of the City of New York, State of New York, on the 19 day of MAY, 1966.

PRESENT: Hon. Hyman Barshay
Justice, Supreme Court

People of the State of New York,

-against-

Stuyvesant Insurance Company,
Surety,

-for-

Robert Delain,
Principal.

County Clerk

Index #3900-'65

Stuyvesant Insurance Company, the surety above named having moved this Court for an order vacating the forfeiture of the undertaking executed by Robert Delain, as principal and said Stuyvesant Insurance Company, as surety entered in the Office of the Clerk of Kings County on the 1st day of April, 1965, and said motion having duly come on to be heard.

Now on reading and filing the notice of motion herein dated the 15th day of March, 1966, together with proof of due service thereof, the affidavit of Stephen M. Nagler duly sworn to the 15th day of March, 1966, and on the consent of the District Attorney of the County of Kings stating that the People of the State of New York have lost no rights and after hearing Stephen M. Nagler, attorney for the above named surety in favor of said motion and Aaron Koota, District Attorney of Kings County, appearing ~~but not opposing~~ and consenting thereto, and due deliberation having been had thereon, it is, on motion of Stephen M. Nagler, attorney for the surety,

ORDERED that the said motion be and the same hereby is granted, and it is further

ORDERED that the forfeiture of the undertaking of bail heretofore executed by Robert Delain as principal and Stuyvesant Insurance Company as surety, which said forfeiture was entered on the 26th day of March, 1965, be and the same hereby is in all respects vacated and set aside, and it is further

ORDERED that the judgment in the sum of $1,000.00 entered upon said undertaking so forfeited in the office of the Clerk of the County of Kings on April 1st, 1965, be and the same hereby is vacated and the Clerk of the County of Kings upon being served with a certified copy of this order is hereby directed to make a note of the vacation of said judgment on all indices and records of said judgment contained in his office referring to this order, and it is further

ORDERED that a copy of this order with notice of entry thereof be served on the District Attorney of Kings County with 10 days after entry thereof.

Enter,

HYMAN BARSHAY
Justice, Supreme Court

STATE OF NEW YORK }
COUNTY OF KINGS } S. S.:

I, ROBERT J. CREWS Clerk of the County of Kings and Clerk of the Supreme Court in and for said County (said Court being a Court of Record) DO HEREBY CERTIFY that I have compared the annexed with the original Order filed in my office 5/19/66 and that the same is a true transcript thereof and of the whole of such original.

In Testimony Whereof, I have hereunder set my hand and affixed the seal of said County and Court, this 20 day of May 1966

Robert J. Crews Clerk

Form 225-20M-412140 (65) 114

CRIMINAL COURT OF THE CITY OF NEW YORK

Part 3, County of Kings

TRANSCRIPT OF RECORD

No. 86460 Docket No. 1218

2/18/ 1965

People on Complaint of

vs.

Robert Delano

ADDRESS 268 Quincy St

AGE 18

OFFENSE Fel Asslt

AT Part 3 - Kings COURT

DISPOSITION dismissed

DATE OF DISPOSITION 6/3/65

JUDGE Maglio

I hereby certify that this is a true transcript of record on file in the Criminal Court.

Date 3/15/ 1966

COURT CLERK

Form 91-Adm.

CHARLES BUCKMAN, M.D.
DIRECTOR
JAMES A. BRICE, M.D.
ASSOCIATE DIRECTOR
FREDERICK T. LAWSON
BUSINESS OFFICER

State of New York
Department of Mental Hygiene

KINGS PARK STATE HOSPITAL

Kings Park, N. Y. 11754

POMPEO S. MILICI, M.D.
DeWITT C. BROWN, M.D.
OLGA VON TAUBER, M.D.
JOSEPH J. CATALANO, M.D.
ASSISTANT DIRECTORS
REUBEN M. CARES, M.D.
DIRECTOR OF CLINICAL LABORATORIES

March 23,1966

Re: Robert Delain In replying refer: DCB:m.

Medical Consultant
Core Scholarship, Education
& Defense Fund, Inc.
150 Nassau Street, Room 1707
New York,N.Y. 10038

Attention: Stephen M.Nagler
Associate to the General Counsel

Dear Doctor:

This is to acknowledge your letter of 3/15/66, relative to the above named, who was admitted to this hospital on 3/18/65.

The subject was irregular in school attendance, had allegedly employed Marihuana and episodially indulged in alcohol. He had been placed in the "600" school as a result of his disruptive behavior in school, Following an argument with a girl friend, he threatened suicide by threatening to jump from a window.

A warrant had been received in the hospital while he was resident here, charging him with felonious assault and disorderly conduct. He was discharged to the custody of the Court on a recommendation of a committee of senior physicians, who interviewed him on 3/18/65. He left the hospital in custody of detectives on 3/31/65.

Very truly yours,

James A. Brice

For: JAMES A. BRICE, M.D.,Assoc.Director
CHARLES BUCKMAN, M.D.,Director

DCB:m.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS CRIMINAL TERM - PART I.

COUNTY CLERK
Index 3900-'65

PEOPLE OF THE STATE OF NEW YORK
Plaintiff,

-against-

THE STUYVESANT INSURANCE COMPANY
Surety,

-for-

ROBERT DELAIN
Principal

STATE OF NEW YORK
COUNTY OF NEW YORK ss:

STEPHEN M. NAGLER, being duly sworn deposes and says; 1. I have reaffirmed all statements made in my previous affadavit dated March 15, 1966.

2. In my previous affadavit, I stated that ROBERT DELAIN was on the date of the forfeiture, a patient at Kings State Hospital, Kings Park, New York. As proof of that statement I annex hereto and make a part hereon, a letter from the Associate Director of Kings Park State Hospital verifying that during the entire period surrounding the date of forfeiture, ROBERT DELAIN was a patient.

3. I stated in my previous affadavit that the charges against ROBERT DELAIN were dismissed on June 3, 1965, in the Criminal Court of the City of New York, County of Kings. I attach hereto a Certificate of Disposition as proof of that statement.

STEPHEN M. NAGLER

Sworn to before me
this 28th day of March, 1966.

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK CRIMINAL TERM

.....X

THE PEOPLE OF THE STATE OF NEW YORK
Plaintiff,

-against-

THE STUYVESANT INSURANCE COMPANY
Surety,

-- for --

FRANCIS DEAVEAREZ (a/k/a, FRANCIS DEVEAUX)
Principal,

.....X

STATE OF NEW YORK ss:
COUNTY OF NEW YORK

STEPHEN M. NAGLER, being duly sworn deposes and says: 1. On March 10, 1966, I made an affadavit explaining the forfeiture of bail in the case of FRANCIS DEAVEAREZ (a/k/a) FRANCIS DEVEAUX, and the reasons why the forfeiture should be vacated. I reaffirmed all statements made at that time in the form in which they appeared.

2. In addition, I wish to state that FRANCIS DEAVEAREZ (a/k/a) FRANCIS DEVEAUX, returned to criminal court on April 9, 1965, on which date he was tried and found guilty of disorderly conduct. As proof thereof, a transcript of record is attached hereto and made a part hereof.

3. It is readily apparent that the principals' absence at the appointed time has in no way prejudiced the rights of the PEOPLE OF THE STATE OF NEW YORK.

4. Wherefore, deponent respectfully reiterates his prayer that forfeiture of bail in connection with the charge of section 722 of the Penal Law in the sum of $500.00 be remitted.

STEPHEN M. NAGLER

Sworn to before me on
this 28th day of March, 1966.

Expires March

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS CRIMINAL TERM

. . . . . .

PEOPLE OF THE STATE OF NEW YORK
Plaintiff,

-against-

THE STUYVESANT INSURANCE COMPANY

County Clerk
Index # 12818

-for-

PRISCILLA (PATRICIA) STEVENS
Principal.

. . . . . .

SIR:

PLEASE TAKE NOTICE that upon the annexed affidavit of STEPHEN M. NAGLER, ESQ., duly sworn to the 3rd day of May, 1965, THAT the undersigned will move this Court at Criminal Term, Part 1, of this Court, at the Courthouse, in the Supreme Court Building, 125-01 Queens Blvd., Kew Gardens, Queens, New York, on the 17th day of May, 1965, at ten o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for an order rescinding the forefeiture of bail and vacating and setting aside a judgment in the amount of $500, resulting from bail forfeiture entered in office of the Clerk of Queens County on the 25th day of November, 1964, against THE STUYVESANT INSURANCE COMPANY, as Surety for PRISCILLA (PATRICIA) STEVENS, Principal, and for such other and further relief as to the Court may seem just and proper.

Dated, Queens County, New York.

May 3rd, 1965.

Yours, Etc.

STEPHEN M. NAGLER
Attorney for Surety
Office and Post Office Address
875 Brook Avenue
Bronx 51, New York

TO: Frank D. O'Connor, Esq.
District Attorney, Queens County
126-05 Hoover Avenue
Kew Gardens, Queens
New York

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF QUEENS: CRIMINAL TERM

.....X

THE PEOPLE OF THE STATE OF NEW YORK
Plaintiff,

-against-

THE STUYVESANT INSURANCE COMPANY
Surety,

-- for --

PRISCILLA (PATRICIA) STEVENS
Principal.

.....X

STATE OF NEW YORK ss;
COUNTY OF QUEENS

STEPHEN M. NAGLER, being duly sworn deposes and says, THAT I am the agent for The Stuyvesant Insurance Company, the surety herein, and as such agent am fully familiar with the facts herein.

THAT heretofore, and on the 23rd day of April 19 , The Stuyvesant Insurance Company entered into a recognizance in the sum of FIVE HUNDRED (500) DOLLARS, wherein PRISCILLA (PATRICIA) STEVENS was the principal, and The Stuyvesant Insurance Company was the surety, in favor of The People of The State of New York, for the appearance of said principal to answer a charge of violation of § 2036

THAT thereafter, on the 9th day of July 1964, the case was called in The Criminal Court, held in and for the county of Queens, and the said principal not appearing the said recognizance was forfeited.

THAT the principal's failure to appear at the court appointed time was neither wilfull nor deliberate and the people have not lost any rights as a result of the non-appearance.

THAT PRISCILLA (PATRICIA) STEVENS was on the 9th of August, 1964, in the Republic of Ghana, Africa, and was not duly informed that she was required to appear at the Criminal Court of the County of Queens.

THAT the proceedings against PRISCILLA (PATRICIA) STEVENS have been removed to the United States District Court for the Eastern District of New York where they are now pending.

THAT it is readily apparent that the principal's absence at the appointed time has been adequately explained and by virtue of the special circumstances existing herein, a granting of the relief sought is fully warranted.

THAT not more than one year has elapsed since the forfeiture was declared.

THAT no previous application for the relief prayed for herein has been made.

Wherefore, deponent respectfully prays that an order be entered in the above entitled action releasing The Stuyvesant Insurance Company from all its obligations under the bail bond in connection with the charge of B 1851, against the said principal and that this court remit the forfeiture of the undertaking filed by the said company, and vacating and setting aside and discharging the judgment in the sum of FIVE HUNDRED ($500.00) DOLLARS, in the office of the Clerk of Queens County, entered on the 25th day of November 1964, in favor of The People of The State of New York, against The Stuyvesant Insurance Company, as surety and PRISCILLA (PATRICIA) STEVENS as principal,

upon receipt by him of the or der of the court, and for such other and further relief as to the court may seem just and proper in the premises.

_____

Sworn to before me

this day of 19

_____

At a Criminal Term of the Supreme Court held in and for the County of Queens at the Courthouse at 135-01 Queens Boulevard, County of Queens of the City of New York, State of New York, on the 24th day of November, 1965.

PRESENT: Hon. Joseph M. Conroy,
Justice, Supreme Court

People of the State of New York,

-against-

V. COLEMAN

Surety

- for -

RONALD COY

Principal

Cash Receipt# 46,196-'64

S.P. 706

V. COLEMAN, the surety above having moved this Court for an order vacating the forfeiture of the undertaking executed by RONALD COY, as principal and V. COLEMAN, as surety entered in the Office of the Department of Finance of New York City on the 20th day of November, 1964, and said motion having duly come on to be heard.

Now on reading and filing the notice of motion herein dated the 7th day of September, 1965 together with proof of due service thereof, the affidavit of Stephen M. Nagler duly sworn to the 7th day of September, 1965, and after hearing STEPHEN M. NAGLER, Attorney for the above named Surety in favor of said motion and Frank O'Connor, District Attorney of Queens County by Lawrence McGrath, the Assistant District Attorney, appearing in opposition, and due deliberation having been had thereon, it is, on motion of STEPHEN M. NAGLER, attorney for the surety,

ORDERED that the said motion be and the same hereby is granted, and it is further

ORDERED that the forfeiture of the undertaking of bail heretofore executed by RONALD COY as principal and V. COLEMAN as surety, which said forfeiture was entered on the 10th say of September, 1964, be and the same hereby is in all respects vacated and set aside, and it is further

ORDERED that the judgment entered upon said undertaking so forfeited in the office of the Department of Finance of the City of New York on November 20, 1964, be and the same hereby is vacated and the Department of Finance upon being served with a certified copy of this order is hereby directed to make a note of the vacation of said judgment on all indices and records of said judgment contained in its office referring to this order, and it is further

ORDERED that the Department of Finance return the sum of $50 cash deposited as a cash bail by V. COLEMAN as Surety for RONALD COY, principal, to the said Surety, and it is further

ORDERED that a copy of this order with notice of entry thereof be served on the District Attorney of Queens County within 10 days after entry thereof.

Enter

Justice, Supreme Court

★GRANTED
NOV 24 1965
CLERK

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS CRIMINAL TERM

----------x

PEOPLE OF THE STATE OF NEW YORK,
Plaintiff,

- against -

THE STUYVESANT INSURANCE COMPANY,
Surety,

COUNTY CLERK
Index #3117-66

- for -

JIMMIE JONES,
Principal.

----------x

SIR:

PLEASE TAKE NOTICE that upon the annexed affidavit of STEPHEN M. NAGLER, ESQ., duly sworn to the 16th day of December, 1966, THAT the undersigned will move this Court at Criminal Term, Part 1, of this Court, at the Courthouse, in the Supreme Court Building, 125-01 Queens Blvd., Kew Gardens, Queens, New York, on the 11th day of January, 1967 at ten o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for an order rescinding the forfeiture of bail and vacating and setting aside a judgment in the amount of $500, resulting from bail forfeiture entered in office of the Clerk of Queens County on the 18th day of April, 1966, against the STUYVESANT INSURANCE COMPANY as Surety for JIMMIE JONES, Principal, and for such other and further relief as to the Court may seem just and proper.

Dated, New York, New York.

December 16, 1966

Yours, etc.

STEPHEN M. NAGLER, Esq.
Attorney for Surety
Office & P.O. Address
150 Nassau Street
New York, New York 10038

TO: Nat Hentel, Esq.
District Attorney, Queens County
126-05 Hoover Avenue
Kew Gardens, Queens
New York

At a Criminal Term of

the Supreme Court held in and for the County of Queens at the Courthouse at 135-01 Queens Boulevard, County of Queens of the City of New York, State of New York, on the day of January 1967.

PRESENT: Hon. Edward Thompson
Justice, Supreme Court

People of the State of New York,

-against-

Stuyvesant Insurance Company,
Surety

--for--

Jeremiah Tehon
Principal

Index No.
205-66

Stuyvesant Insurance Company, the surety above named having moved this Court for an order vacating the forfeiture of the undertaking executed by Jeremiah Tehon, as principal and said Stuyvesant Insurance Company, as surety entered in the Office of the Clerk of Queens County on the 11th day of January , 1966, and said motion having duly c me on to be heard.

Now on reading and filing the notice of motion herein dated the 6th day of December 1966, together with proof of due service thereof, the affidavit of Stephen M. Nagler duly sworn to the 6th day of December, 1966, and on the consent of the District Attorney of the County of Queens stating that the People of the State of New York have lost no rights and after hearing Stephen M. Nagler, attorney for the above named surety in favor of said motion and Hon. Nat Hentel, District Attorney of Queens County by Lawrence McGrath, Assistant District Attorney, appearing but not opposing, and due deliberation having been had thereon, it is, on motion of Stephen M. Nagler, attorney for the surety,

ORDERED that the said motion be and the same hereby is granted, and it is further

ORDERED that the forfeiture of the undertaking of bail heretofore executed by Jeremiah Tehon as principal and Stuyvesant Insurance Company as surety, which said forfeiture was entered on the 14th day of December 1965, be and the same hereby is in all respects vacated and set aside, and it is further

ORDERED that the judgement in the amount of $500.- entered upon said undertaking so forfeited in the office of the Clerk of the County of Queens on January 11th, 1966, be and the same hereby is vacated and the Clerk of the County of Queens upon being served with a certified copy of this order is hereby directed to make a note of the vacation of said Judgement contained in his office referring to this order, and it is further

ORDERED that a copy of this order with notice of entry thereof be served on the District Attorney of Queens County with 10 day after entry thereof be served on the District Attorney of Queens County with 10 days after entry thereof.

Enter

★GRANTED
JAN 27 1967
P.L.
CLERK

E.T

Justice, Supreme Court

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS CRIMINAL TERM

----------X

PEOPLE OF THE STATE OF NEW YORK,
Plaintiff,

-against-

THE STUYVESANT INSURANCE COMPANY, SURETY,

-for-

JEREMIAH TEHON,
Principal.

COUNTY CLERK
Index #204-66

----------X

SIR:

PLEASE TAKE NOTICE that upon the annexed affidavit of STEPHEN M. NAGLER, ESQ., duly sworn to the 6th day of December, 1966, THAT the undersigned will move this Court at Criminal Term, Part 1, of this Court, at the Courthouse, in the Supreme Court Building, 125-01 Queens Blvd., Kew Gardens, Queens, New York, on the 14th day of December, 1966 at ten o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for an order rescinding the forfeiture of bail and vacating and setting aside a judgment in the amount of $500, resulting from bail forfeiture entered in office of the Clerk of Queens County on the 11th day of January, 1966, against the STUYVESANT INSURANCE COMPANY as Surety for JEREMIAH TEHON, Principal, and for such other and further relief as to the Court may seem just and proper.

Dated, ~~Queens County~~, New York.

December 6, 1966.

Yours, etc.

STEPHEN M. NAGLER, Esq.
Attorney for Surety
Office & P.O. Address
150 Nassau Street
New York, New York 10038

TO: Nat Hentel, Esq.
District Attorney, Queens County
126-05 Hoover Avenue
Kew Gardens, Queens
New York

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS: CRIMINAL TERM

THE PEOPLE OF THE STATE OF NEW YORK,
Plaintiff,

-against-

THE STUYVESANT INSURANCE COMPANY
Surety,

AFFIDAVIT

-for-

JEREMIAH TEHON,
Principal.

STATE OF NEW YORK)
COUNTY OF QUEENS) ss:

STEPHEN M. NAGLER, being duly sworn, deposes and says, THAT I am the agent for The Stuyvesant Insurance Company, the surety herein, and as such agent am fully familiar with the facts herein.

THAT Heretofore, and on the 22nd day of April, 1964, The Stuyvesant Insurance Company entered into a recognizance in the sum of FIVE HUNDRED (500) DOLLARS, wherein JEREMIAH TEHON was the principal, and The Stuyvesant Insurance Company was the surety, in favor of The People of The State of New York, for the appearance of said principal to answer a charge of violation of Section 722 of the Penal Law.

THAT thereafter, on the 14th day of December, 1965, the case was called in The Criminal Court, held in and for the county of Queens, and the said principal not appearing the said recognizance was forfeited.

THAT the principal's failure to appear at the court appointed time was neither willfull nor deliberate and the people have not lost any rights as a result of the non-appearance.

THAT on the aforesaid 14th day of December, 1965, the defendant, JEREMIAH TEHON, was unaware that he was required to appear in the Criminal

Court because prior to that date his case, along with many others, had been removed to the United States District Court for the Eastern District of New York and had been removed completely from the calendar of the Criminal Court of the City of New York, which by virtue of the removal had lost jurisdiction over the defendant. The case remained in the federal courts for over a year before it was remanded to the Criminal Court by virtue of ~~a decision of the Supreme Court of the United States (People v. Galamison, et al.).~~ The restoration of the case to the calendar of the Criminal Court was not made known to the defendant on or before the 14th day of December, 1965.

THAT thereaftern on the 15TH day of December, 1965, the defendant voluntarily surrendered to the Criminal Court and the charge against him was dismissed.

THAT it is readily apparent that the principal's absence at the appointed time has been adequately explained and by virtue of the special circumstances existing herein, a granting of the relief sought is fully warranted.

THAT not more than one year has elapsed since the forfeiture was declared.

THAT no previous application for the relief prayed for herein has been made.

Wherefore, deponent respectfully prays that an order be entered in the above entitled action releasing The Stuyvesant Insurance Company from all its obligations under the bail bond in connection with the charge of violation of Section 722 of the Penal Law against the said principal and that this Court remit the forfeiture of the undertaking filed by the said company, and vacating and setting aside and discharging the judgment in the sum of FIVE HUNDRED (500) DOLLARS, in the office

of the Clerk of Queens County, entered on the 11th day of January, 1966, in favor of the People of the State of New York, against the Stuyvesant Insurance Company, as surety and JEREMIAH TEHON as principal, upon receipt by him of the order of the court, and for such other and further relief as to the court may seem just and proper in the premises.

Stephen M. Nagler
STEPHEN M. NAGLER

Sworn to before me
this 6th day of December, 1966.

Carl Rachlin

CARL RACHLIN
Notary Public, State of New York
No. 24-3192200
Qualified in Kings County
Certs. filed with Kings & N.Y. Co. Clks
Term Expires March 30, 1967

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS, CRIMINAL TERM

THE PEOPLE OF THE STATE OF NEW YORK,
Plaintiff,

-against-

THE STUYVESANT INSURANCE COMPANY,
Surety,

-for-

JIMMIE JONES,
Principal.

AFFIDAVIT
COUNTY CLERK
Index #3117-66

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:

STEPHEN M. NAGLER, being duly sworn, deposes and says:

THAT I am the agent for the Stuyvesant Insurance Company, the Surety herein, and as such agent am fully familiar with the facts herein.

THAT Heretofore, and on the 22nd day of April, 1964, the Stuyvesant Insurance Company entered into a recognizance in the sum of FIVE HUNDRED (500) DOLLARS, wherein JIMMIE JONES was the principal, and the Stuyvesant Insurance Company was the Surety, in favor of The People of The State of New York, for the appearance of said principal to answer a charge of violation of Section 1851 of the Penal Law.

THAT thereafter, on the 7th day of February, 1966, the case was called in The Criminal Court, held in and for the county of Queens, and the said principal not appearing the said recognizance was forfeited.

THAT the principal's failure to appear at the court appointed time was neither willfull nor deliberate and the people have not lost any rights as a result of the non-appearance.

THAT on the aforesaid 7th day of February, 1966, the defendant, JIMMIE JONES, was unaware that he was required to appear in the Criminal Court because prior to that date his case, along with many others, had

been removed to the United States District Court for the Eastern District of New York and had been removed completely from the calendar of the Criminal Court of the City of New York, which by virtue of the removal had lost jurisdiction over the defendant. The case remained in the federal courts for over a year before it was remanded to the Criminal Court by virtue of a stipulation between attorneys for the defendants, including JIMMIE JONES, and the District Attorney of Queens County. The restoration of the case to the calendar of the Criminal Court was not made known to the defendant on or before the 7th day of February, 1966.

THAT on the aforementioned 7th day of February, 1966, JIMMIE JONES was a member of the armed forces of the United States, stationed with the United States Army in the State of Florida.

THAT, as appears from the enclosed transcript of record, JIMMIE JONES immediately, on returning to New York on furlough and learning that his presence was required in the Criminal Court, surrendered himself voluntarily to the court and, as appears from the transcript of record, attached hereto and made a part hereof, the charges against him, including the charge of violating Section 1851 of the Penal Law, were dismissed on motion by the District Attorney of Queens County.

THAT it is readily apparent that the principal's absence at the appointed time has been adequately explained and by virtue of the special circumstances existing herein, a granting of the relief sought is fully warranted.

THAT not more than one year has elapsed since the forfeiture was declared.

THAT no previous application for the relief prayed for herein had been made.

WHEREFORE, deponent respectfully prays that an order be entered in the above entitled action releasing the Stuyvesant Insurance Company from all its obligations under the bail bond in connection with the charge of violation of Section 1851 of the Penal Law against the said principal and that this Court remit the forfeiture of the undertaking filed by the said company, and vacating and setting aside and discharging the judgment in the sum of FIVE HUNDRED (500) DOLLARS, in the office of the Clerk of Queens County, entered on the 18th day of April, 1967, in favor of the People of the State of New York, against the Stuyvesant Insurance Company, as Surety and JIMMIE JONES as principal, upon receipt by him of the order of the court, and for such other and further relief as to the court may seem just and proper in the premises.

Stephen M. Nagler

STEPHEN M. NAGLER

Sworn to before me
this 16th day of December, 1966.

Carl Rachlin

CARL RACHLIN
Notary Public, State of New York
No. 24-3192200
Qualified in Kings County
Certs. filed with Kings & N.Y. Co. Clks.
Term Expires March 30, 1967

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS : CRIMINAL TERM

- x

THE PEOPLE OF THE STATE OF NEW YORK :

-against- :

THE STUYVESANT INSURANCE COMPANY, :

Surety, :

JIMMIE JONES, :

Principal. :

- x

STATE OF NEW YORK)
: ss.:
COUNTY OF QUEENS)

LAWRENCE J. McGRATH, being duly sworn, deposes and says that he is an Assistant District Attorney in the office of the District Attorney of Queens County.

This is a motion by the surety herein for an order rescinding an order of forfeiture entered in the Criminal Court of Queens on February 7, 1966 because of the defendant's failure to appear pursuant to the terms of a bail bond executed by the surety herein for his appearance to answer a charge of having violated Section 1851 of the Penal Law, and to vacate and set aside a judgment entered in the office of the Clerk of the County of Queens as a result of the forfeiture.

The facts as contained in the affidavit of Stephen M. Nagler, submitted in support of this motion have been compared with the records of the District Attorney's office and have been found to be substantially correct.

The surety herein submits in support of this motion a transcript of record of the Criminal Court of Queens, part 3, dated December 21, 1966 which discloses that the charge

against the defendant herein was dismissed on motion of the District Attorney on February 8, 1966.

No expense having been incurred by the District Attorney as a result of this forfeiture, the District Attorney offers no opposition to the granting of this motion but respectfully asks that costs be imposed.

Sworn to before me this
22nd, day of December, 1966.

Aurora M. DiPalma

AURORA M. DI PALMA
Notary Public, State of New York
No. 41-6042200 — Queens County
Term Expires March 30, 1968

Lawrence J. McGrath

LJM:AP
12/12/66
#4385

Supreme Court of the State of New York
Criminal Term : County of Queens
- -x

The People of the State of New York :

-against- :

Jeremiah Teahan, :

Defendant. :

The Stuyvesant Insurance Company, :

Surety. :

- -x

State of New York)
: ss.:
County of Queens)

LAWRENCE J. MC GRATH, being duly sworn deposes and says that he is an Assistant District Attorney in the office of the District Attorney of the County of Queens.

This is a motion by the surety herein for an order rescinding an order of forfeiture entered in the Criminal Court of Queens because of the defendant's failure to appear pursuant to the terms of his bail bond executed by the surety herein for his appearance and to set aside a judgment resulting from the forfeiture and entered in the office of the Clerk of the County of Queens on the 11th day of January, 1966.

The facts as contained in the supporting affidavit of Stephen M. Nagler sworn to the 6th day of December, 1966 have been compared with the records of the District Attorney's office and found to be substantially correct.

Submitted in support of this motion is a transcript of record of the Criminal Court of the City of New York, Part 3,

Queens, dated December 7, 1966 which discloses that the defendant herein was found guilty, fined fifty-dollars or two days and that the fine was paid.

Under the circumstances, the District Attorney offers no opposition to the granting of this motion but respectfully asks that costs be imposed.

Lawrence J. McGrath

Sworn to before me this
12th day of December, 1966.

AURORA M. DI PALMA
Notary Public, State of New York
No. 41-6042200 — Queens County
Term Expires March 30, 1968

LJM:AP
12/12/66
#4384

Supreme Court of the State of New York
Criminal Term : County of Queens

- -x

The People of the State of New York :

-against- :

Jeremiah Teahan, :

Defendant. :

The Stuyvesant Insurance Company, :

Surety. :

- -x

State of New York)
: ss.:
County of Queens)

LAWRENCE J. MC GRATH, being duly sworn deposes and says that he is an Assistant District Attorney in the office of the District Attorney of the County of Queens.

This is a motion by the surety herein for an order rescinding an order of forfeiture entered in the Criminal Court of Queens on the 14th day of December, 1965 because of the defendant's failure to appear to answer a charge of having violated Section 1851 of the Penal Law pursuant to the terms of the bail bond executed for his appearance by the surety herein and to vacate and set aside a judgment resulting from the bail forfeiture entered in the office of the Clerk of the County of Queens on the 11th day of January, 1966.

Your deponent has compared the facts as set forth in the affidavit of Stephen M. Nagler submitted in support of this motion with the records of the District Attorney and has found the facts as contained in said affidavit are substantially

correct. Submitted in support of this motion also is a transcript of record of the Criminal Court of the City of New York, Part 3 of Queens, dated December 7, 1966 which discloses that on December 16, 1965 the charge against the defendant herein was dismissed on motion of the District Attorney by Honorable George Balbach, a judge of the Criminal Court of the City of New York.

In view of the fact that the charge against the defendant herein has been disposed of and no expense has been incurred by this office as a result of the forfeiture, the District Attorney offers no opposition to the granting of this motion, but respectfully asks that costs be imposed.

Lawrence J. McGrath

Sworn to before me this
12th day of December, 1966.

[illegible]
Notary Public, State of New York
No. [illegible] - Queens County
Term Expires March 30, 1968

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS CRIMINAL TERM

. . . . . .

PEOPLE OF THE STATE OF NEW YORK
Plaintiff,

-against-

THE STUYVESANT INSURANCE COMPANY

-for-

GILBERT BANKS, Principal.

County Clerk
Index #
12,847-64

. . . . . .

SIR:

PLEASE TAKE NOTICE that upon the annexed affidavit of STEPHEN M. NAGLER, ESQ., duly sworn to the 11th day of June, 1965, THAT the undersigned will move this Court at Criminal Term, Part 1, of this Court, at the Courthouse, in the Supreme Court Building, 125-01 Queens Blvd., Kew Gardens, Queens, New York, on the 16th day of June 1965, at ten o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for an order rescinding the forefeiture of bail and vacating and setting aside a judgment in the amount of $500, resulting from bail forfeiture entered in office of the Clerk of Queens County on the 25th day of November, 19 64, against THE STUYVESANT INSURANCE COMPANY, as Surety for GILBERT BANKS, Principal, and for such other and further relief as to the Court may seem just and proper.

Dated, Queens County, New York.

June 11th 19 65.

Yours, Etc.

STEPHEN M. NAGLER
Attorney for Surety
Office and Post Office Address
875 Brook Avenue
Bronx 51, New York

TO: Frank D. O'Connor, Esq.
District Attorney, Queens County
126-05 Hoover Avenue
Kew Gardens, Queens
New York

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF QUEENS: CRIMINAL TERM

.....X

THE PEOPLE OF THE STATE OF NEW YORK
Plaintiff,

-against-

THE STUYVESANT INSURANCE COMPANY
Surety,

-- for --

GILBERT BANKS, Principal.

.....X

STATE OF NEW YORK ss;
COUNTY OF QUEENS

STEPHEN M. NAGLER, being duly sworn deposes and says, THAT I am the agent for The Stuyvesant Insurance Company, the surety herein, and as such agent am fully familiar with the facts herein.

THAT heretofore, and on the 22nd day of April 1964 The Stuyvesant Insurance Company entered into a recognizance in the sum of FIVE HUNDRED (500) DOLLARS, wherein GILBERT BANKS was the principal, and The Stuyvesant Insurance Company was the surety, in favor of The People of The State of New York, for the appearance of said principal to answer a charge of violation of §1851 of The Penal Law.

THAT thereafter, on the 22nd day of June 1964, the case was called in The Criminal Court, held in and for the county of Queens, and the said principal not appearing the said recognizance was forfeited.

THAT the principal's failure to appear at the court appointed time was neither wilfull nor deliberate and the people have not lost any rights as a result of the non-appearance.

THAT on June 24, 1964, the Hon. J. Wolfe Chassen, Judge of the Criminal Court of the City of New York rescinded the forfeiture, and reinstated the bail.

THAT it is readily apparent that the principal's absence at the appointed time has been adequately explained and by virtue of the special circumstances existing herein, a granting of the relief sought is fully warranted.

THAT not more than one year has elapsed since the forfeiture was declared.

THAT no previous application for the relief prayed for herein has been made.

Wherefore, deponent respectfully prays that an order be entered in the above entitled action releasing The Stuyvesant Insurance Company from all its obligations under the bail bond in connection with the charge of $1851 , against the said principal and that this court remit the forfeiture of the undertaking filed by the said company, and vacating and setting aside and discharging the judgment in the sum of FIVE-HUNDRED (500) DOLLARS, in the office of the Clerk of Queens County, entered on the 25th day of November 1964 , in favor of The People of The State of New York, against The Stuyvesant Insurance Company, as surety and as principal,

upon receipt by him of the or der of the court, and for such other and further relief as to the court may seem just and proper in the premises.

_____

Sworn to before me

this day of 19

_____

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS: CRIMINAL TERM

PEOPLE OF THE STATE OF NEW YORK

-against-

STUYVESANT INSURANCE COMPANY,
Surety,

-for-

ALBERT ADKINS, HENRY DOKTOR, WALTER HARDY,

FRANK ROBERSON, DILL BROWN, LAURRAS HOBBS,
Principals, To Motions Each

SUPPLEMENTARY AFFIDAVIT

STATE OF NEW YORK)
: ss:
COUNTY OF NEW YORK)

JOHN E. SILVERBERG, being duly sworn deposes, and says:

That he is an attorney, and was counsel for forty-nine persons arrested in Queens County on April 4, 1964 and April 22, 1964 while demonstrating against the opening of the New York Worlds Fair.

That on or about June 17, 1964, all of these cases were removed to the United States District Court for the ~~Southern~~ Eastern District of New York, pursuant to the provisions of title 28, Section 1443, USC. JEO

That thereafter Title 9 of the 1964 Civil Rights Act was enacted into law and the removal was appealed to the United States Supreme Court which eventually denied certiorary. Accordingly, the cases were remanded for trial to Queens County Criminal Court.

Eventually the deponent received post card notification

that all cases had been rescheduled for September 22, 1965. Upon information and belief, neither the District Attorney's office nor the Courts gave any further notice to the defendants of the pending litigation.

Prior to September 22, 1965, a Stay was obtained from Supreme Court Justice Joseph C. Conroy, of all said matters pending determination of a motion for trial by indictment. The Criminal Court cases and the motion for trial by indictment were then adjourned several times while conferences were held with the District Attorney's office looking toward a final disposition of said cases.

On October 21, 1965, it was agreed that the motion for trial by indictment be adjourned to November 24,1965, while the Criminal Court actions would be adjourned to November 26, 1965.

In the interim it was definitely decided that those defendants charged with having violated section 1990 of the Penal law would plead guilty to that charge and all other charges would be dismissed. This was an excellent disposition for the defendants since section 1990 P.L. carries a maximum penalty of a $5.00 fine.

A few days prior to November 26, 1965, your deponent met with a clerk in Criminal Court, Queens County, who was in charge of part 1B and arranged directly with him for an adjournment to December 14, 1965, of all the criminal charges including several cases against Worlds Fair demonstrators that were being handled by Attorney Stephen M. Nagler. It was not decided at that time whether the cases would be dismissed in the various parts in which they were situated at the time of their removal to the Federal Courts, or whether they would all be placed

in a special part for dismissal. Deponent was advised by said Clerk that the District Attorney's Office would make that decision and apprise Deponent as to how that issue would be handled

Subsequently, Assistant District Attorney Harvey Ehrlich, contacted Deponent advising that all cases would be heard in a Special Court before the Honorable Judge George Balbach, and also advising Deponent that Mr. Ehrlich had prepared a statement on behalf of the People and that Deponent should prepare a statement on behalf of defendants to be submitted for the record, but that at the time of dismissal, Attorney William H. Booth would talk for the defendants for the record.

On December 14, 1965, Mr. Ehrlich read his statement into the record. The statement had been prepared in advance and in order to save Counsel the trouble of ordering the transcript of proceedings on that day which were lengthy and voluminous Mr. Ehrlich on December 15, 1965, issued a typewritten statement of his remarks before the Court of the previous day copy of which is annexed hereto and made a part hereof.

Judge Balbach agreed to every recommendation of the District Attorney except that he refused to dismiss cases in the absence of a defendant.

The next several weeks while Frank O'Connor was still District Attorney of Queens County were spent attempting to locate and bring before the Court defendants who could not be located as of December 14, 1965.

Subsequently, when Mr. Hentel became District Attorney of Queens County conferences were held at which it was agreed that the cases against the remaining defendants who could not be located, would all be dismissed. The details were to beironed out at some subsequent day. Your Deponent made numerous phone

calls and visits to Assistant District Attorney Morton Greenspan to carry out the decision which had been made in conference with Mr. Howard Czerny and other assistants in Mr. Hentel's office but was always told that the matter would be taken care of although it could not be concluded at the particular time. It was clearly understood by Mr. Hentel's office that the reason for the promised dismissals was so as to remit bail forfeitures which had occured before Judge Balbach in 1965.

Sworn to befor me this
1st day of February, 1967,

John E. Silverberg

Notary Public

NOTARY PUBLIC, State of New York
No. 60-8592600
Qualified in Westchester County
Certs. filed with N. Y. Co. Clerk & Reg.
Commission Expires March 30, 19

HBE:AP
12/15/65

On April 22nd, 1964 the New York World's Fair opened its gates. It was a dramatic occasion, bound to get coverage by all news media. The place and the time would attract the attention of all of the 50 states. Religious, fraternal, educational organizations, of varied beliefs, programs and ideologies and huge manufacturing, sales and service organizations rented space within the World's Fair grounds to be enabled to convey their messages to all interested, curious, observant and important segment of our population. The purpose of the Fair was to educate "The peoples of the world as to the interdependence of nations and the need for universal peace."

There are many who believe that it is also necessary to educate the people of the United States as to the interdependence of our citizens of all races and the need of racial peace - to end discrimination of all kinds - in housing, in employment, in education. One hundred years after the emancipation of the Negro, the Congress was still struggling with legislation to spell out the American ideal based on the equality of all people.

The battle for equality, as any battle, meant different things to different people. Some looked to our legislators for aid, others relied on our schools to educate, others were grateful for every little advance that was made.

The older civil rights groups found new groups, sometimes in co-operation, sometimes in competition - most demanding militancy FREEDOM NOW - ACTION NOW. Some clergymen no longer preached turning the other cheek - automation was NOW - education had to be NOW - jobs were needed NOW -. The time of waiting and hoping

and praying, became the time for getting.

New strategies - new tactics were demanded and experimented with. Here and there, fortunately in limited areas, the crack-pots - the self-seekers - the wild-eyed - the troublemakers moved onto the scene - some infiltrated into worthwhile organizations.

So - with the advent of the World's Fair, this County was threatened by so-called divil rights proponents with a massive obstruction of all means of travel on the opening day. Faced with the probability of the immobilization of ambulances, fire and police vehicles, District Attorney O'Connor applied to the Justice of the Supreme Court and secured an injunction to keep traffic and transportation moving - and that threat was ended.

But, on opening day, among the thousands who entered the Fair grounds, were the sensible protagonists of civil rights and the crack pots and troublemakers as well.

I have no doubt that the overwhelming majority of demonstrators believed that their right to demonstrate was guaranteed by the First and Fourteenth Amendments to our Constitution - others however may have believed that the end justified the means - regardless of their nature.

Some persons lay down in front of vehicular traffic, others jumped on tables and counters in pavilions, others may have blocked the ingress and egress of persons at other pavilions - some milled about causing minor interferences with persons in still other pavilions.

This mass movement could have and probably did cause confusion and potential danger. Fortunately, an ample number of

city and World's Fair police were present. The annoyances, interferences and confusion was abated. Some 200 or 300 persons were arrested.

The basic charge in those cases was disorderly conduct, an offense. To convict under this section there must be proof of intent to provoke a breach of the peace or curcumstances whereby a breach of the peace may be occasioned as well as the specific unlawful acts. If the defendants actions were bottomed upon their honest beliefs that they were protected by the First Amendment to the Federal Constitution, intent to breach of the peace was not present. If the second part of the necessary foundation is to be considered, then there are cases which cast a doubt that a breach of the peace may be occasioned were there a number of police present.

Many of the defendants pleaded guilty to offenses - many have been convicted and some appeals from those convictions are now pending in the Appellate Term of the Supreme Court. Many were acquitted. Four convictions were reversed by the Court of Appeals.

The Appellate Term, United States District Courts, Southern District, and Eastern District, The United States Court of Appeals for this Circuit have all written on civil rights demonstrations, but much more remains to be decided.

Meanwhile, as some defendants pleaded guilty and others were tried, some convicted, some acquitted and constitutional law was argued in contests in every federal and appellate court

in our area, the 1964 and 1965 Civil Rights Bills have become law, the Reverend Martin Luther King was named a Nobel Laureate, Birmingham and Selma shocked the nation and Mr. O'Connor and other persons of good will marched in Washington and out of Selma and the civil rights of Negro Americans and of civil rights of Negro Americans and of civil rights workers have been extended by the United States Supreme Court.

We have reached calmer understanding and cooperation of all parties. Many of these demonstrators are back at school and are now teaching in the Republic of Ghana, and working and living elsewhere.

The long period of time that has elapsed since these arrests were made was consumed, not by dilatory tactics for the sake of delay, but by assiduous application by defense attorneys to the provisions of the Federal statutes respecting Civil Rights Laws. They were in error, but they undoubtedly acted in their clients best interest as they saw them.

We are now faced with some 200 defendants entitled to be tried fairly. Counsel have indicated that they may ask for severances and in some instances they may prove their right to separate trials. The issues involve the application of constitutional standards as well as the criminal law of this state. The trials would be lengthy, consuming the time and energies of this Court. Questions of identification of persons, committing each of the several acts, questions of bringing some witnesses from distant areas must be considered.

The defendants having refrained from further demonstrations, although the Court of Appeals has indicated that the Fair grounds were quasi public in nature, indicated that their real intent may have been merely to bring their grievances and aspirations to the bar of public opinion, so that at long last prejudice and segregation and denial of civil rights may disappear from our beloved country.

In this period of celebration of freedom of religious faith and of good will to all men in the Chanukal and Christmas spirit, the altruistic motive of most, if not all, of the defendants may be considered.

Some complainants have requested leave to withdraw their complaints against these defendants. Counsel for Pinkerton Detective Agency, which supervised the World's Fair Police Department, join in the request and the District Attorney of this County consents thereto, all subject of course to the approval of this Court.

My remarks are not, however, to be construed, in any manner whatsoever, as consent or approval to any violation of law or disturbance of public order, regardless of the merit of the cause or the intention of the actors. Civil rights cannot be secured thru civil wrongs nor can constitutional guarantees be implemented by criminal action.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS:CRIMINAL TERM

PEOPLE OF THE STATE OF NEW YORK,

-against-

STUYVESANT INSURANCE COMPANY,
Surety,

-for-

ALBERT ADKINS, HENRY DOKTOR,WALTER HARDY,
FRANK ROBERSON,BILL BROWN,LAURRAS HOBBS,
Principal.

SUPPLEMENTARY AFFIDAVIT

STATE OF NEW YORK)ss.:
COUNTY OF NEW YORK)

STEPHEN M. NAGLER, ESQ. being duly sworn, deposes and says:

1. I am the attorney for the Surety herein, and am familiar with the facts involved in the forfeitures of bail in the above entitled cases.

2. All of the principals named above were arrested at a Civil Rights demonstration at the Worlds Fair in April, 1964.

3. Shortly after their arrests, the cases for the principals herein along with many others were removed to the United States District Court, Eastern District of New York (Docket No.64C886). When the petition for Removal was filed, the Criminal Court of the City of New York lost jurisdiction over the principals and their co-defendants and their cases were completely removed from the Calendar of the said Criminal Court. The cases of all of the principals except Hardy were remanded to the Criminal Court of the City of New York at various times during 1965 on a stipulation between Counsel and the District Attorney of Queens County. This stipulation was based on a decision by the said District

Attorney that charges against all of the principals herein and their co-defendants would be dismissed in the Criminal Court. On information and belief no notice requiring the principals herein to appear on any given date was sent out by the said Criminal Court. None of the principals whose bail was forfeitured had knowledge either that they cases had been remanded or that they were required to appear on a given date. Their co-defendant who did appear learned of the date on which appearances would be required from their attorneys. The failure of the principals herein to appear resulted from a lack of knowledge on their part that they be present in the Criminal Court of the City of New York, County of Queens, on the date their forfeitures occured or on any other date. The above is true of the defendant Hardy who was represented by John Silverburg, except that his case was remanded by order of the Supreme Court of the United States. Had the forfeitures occured on "adjourned dates", so that the principals herein would have had previous knowledge of the requirement that they appear, this would of course not be the case.

4. Subsequent to their remand, the cases of the principals named above were placed on the calendar of the Criminal Court of the City of New York, County of Queens solely for the purpose of dismissal along with their co-defendants. In fact, the charges against all their co-defendants were dismissed. The charges against the principal herein were not dismissed solely because they failed to appear. This is not a legal reason for refusing to dismiss since in every case the defendants were represented by Counsel who was present at the time bail was forfeited and the cases were on the calendar solely for the purpose of dismissal of the charges which resulted in bail

forfeiture. This fact is illustrated by a statement read into the record of the Criminal Court of the City of New York by Honorable Harvey B. Ehrlich, an Assistant District Attorney in charge of these cases.

5. As to the principal Adkins, the facts are typical. Albert Adkins was arrested on the same complaint as that against Lane Perdue and Marshall Brown. These cases were placed on the calendar of the Criminal Court on or about the 14th of May 1965, shortly after they were remanded from the United States District Court for the Eastern District of New York. I represented all three defendants at that time. Lane Perdue and Marshall Brown both appeared, charges against them were dismissed on motion by the District Attorney. The facts are almost identical in the case of Henry Doktor whose co-defendants on information and belief were one Patricia Due and one Stephen Gordon. All three defendants were represented by Eugene Brook and, on information and belief on the 27th day of April, 1965, the charges were dismissed against co-defendants Henry Doktor who appeared in the Criminal Court, but not against Henry Doktor who had no notice of the requirement that he appear, and who failed to appear on that day. I represented all of the other defendants at the time bail was forfeitured in the case of the principals, with the exception of Walter Hardy. The facts involving the forfeiture of bail in their cases are virtually identical as set out above. Their cases were placed on the calendar of the Criminal Court shortly after they were remanded from the United States District Court. They came on before the Honorable George Balbach who dismissed the charges against defendants who actually appeared, but forfeitured the bail of the principals named above not heretofore discussed.

WHEREFORE, deponent respectfully pray that the forfeiture of bail in the cases of the principals named above be remitted as requested in the main motions.

_____

Sworn to before me this

day of February 1967

_____

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS: CRIMINAL TERM

.....X

THE PEOPLE OF THE STATE OF NEW YORK
Plaintiff,

-against-

THE STUYVESANT INSURANCE COMPANY
Surety,

County Clerk
Index #5365

Docket #

--for--

DANIEL POLLOCK Principal

.....X

STATE OF NEW YORK)
COUNTY OF QUEENS) ss.

AFFIDAVIT

EDWARD N. HERMAN being duly sworn deposes and says:

THAT I am an Assistant District Attorney for the County of Queens, City of New York.

THAT I was one of the Assistant District Attorneys concerned with the prosecution of defendants arrested at the Shaefer Pavilion of the New York World's Fair in April of 1964, and as such I am fully familiar with the facts in these cases. Daniel Pollock was one of those arrested at the Shaefer Pavilion at that time.

THAT nearly 90 persons including Daniel Pollock were arrested at the Shaefer Pavilion.

THAT due to the large number of persons arrested at the New York World's Fair on April 22, 1964 considerable time was spent in preparation and arraignment for trial and

adjournments were had in the various Parts in connection therewith. It is my recollection that prior to May 7, 1964, I had agreed with defense counsel that a joint application would be made for an adjournment of the Shaefer Pavilion situation subject, of course, to the approval of the court.

THAT prior to June 17, 1964 the complaints against all but seven of the persons arrested at the Shaefer Pavilion of the New York World's Fair were withdrawn and/or dismissed with the consent of the District Attorney. Since this defendant was not one of the seven, the charges against him would have been dismissed had he been present at that time. In fact on June 17, 1964 a motion to dismiss was actually made and granted.

THAT at no time had the District Attorney taken any position adverse to the re-instatement of bail as to this defendant.

EDWARD N. HERMAN
Assistant District Attorney,
County of Queens
Office and P. O. Address
125-01 Queens Boulevard
Kew Gardens, Queens, New York

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF QUEENS: CRIMINAL TERM

.....X

THE PEOPLE OF THE STATE OF NEW YORK

Plaintiff,

-against-

THE STUYVESANT INSURANCE COMPANY

Surety,

--for--

DANIEL POLLOCK,

Principal.

.....X

STATE OF NEW YORK
COUNTY OF QUEENS ss.

AFFIDAVIT

George Schiffer being duly sworn deposes and says:

1. I was one of the attorneys for persons arrested at the Schaeffer Pavilion of the New York World's Fair on April 22, 1964 in the course of a Civil Rights demonstration. One of these persons was Daniel Pollock. I am fully familiar with the facts involving the forfeiture of bail in the case of PEOPLE v. DANIEL POLLOCK .

2. Nearly 300 persons were arrested in connection with the World's Fair demonstration of April, 1964. On April 22/23 attorneys for defendants, clerks, district attorneys and judges remained in court until after 3 A.M. to complete arraignments and bail procedures. Bail releases

for some persons could not be completed until two days later.

3. 90 persons, including Daniel Pollock, were arrested at the Schaeffer Pavilion alone. The arrests took place at about 1 P.M. Defendants however, were not brought into court until about 11 P.M. because the World's Fair Police refused to sign complaints against them. Finally at about 11 P.M. a Mr. Cook, Director of Public Relations for the Schaeffer Company, consented to sign a complaint. Meanwhile, because no complaint had been signed the defendants were denied access to counsel. Considerable confusion necessarily resulted.

4. On the evening of April 22, 1964 dates were fixed by the court for future appearances in these cases in April, May and June. It took several weeks to compile accurate lists of names, charges, docket numbers and addresses. As a result of confusion in the records of defendants' attorneys, court clerks, and the District Attorney, few people, including the defendants, were actually certain of the next date on which they would be required to appear. Although attorneys for defendants, court clerks and Assistant District Attorneys worked together very closely to eliminate errors it took several weeks until much of the confusion was removed. Despite

all these circumstances Judge Larry Vetrano insisted that each defendant appear on each and every scheduled date although it was known in advance that adjournments would be requested since neither side was prepared to go to trial.

5. It was known in advance that adjournments would be requested in the cases of the persons arrested at the Schaeffer Pavilion, including Daniel Pollock, when these cases were called on May 7, 1964. Adjournments were requested because the attorneys for defendants and the District Attorney were considering what disposition should be made of these cases. Because of Judge Vetrano's insistence on appearances by defendants in such situations however, defaults were inevitable.

6. In every case which came up or when a defendant came in after a default a motion was made to reinstate bail. These motions were not opposed by the PEOPLE and were uniformly granted by the judges of the Criminal Court.

During a short period of time, Judge Vetrano's Bulletin No.15 to the judges of the Criminal Court was in force. Bulletin No.15 purported to change the normal procedure in bail defaults and to require the defendants to appear on dates on which it was known that an adjournment would be requested with the consent of all parties. Judge Vetrano's

order was rescinded early in July, 1964. This order added to the confusion.

7. By mid-June a determination had been reached to dismiss all charges as to some defendants and some charges as to others. Other defendants elected to plead guilty. Still other defendants elected to stand trial. During the week beginning on Monday, June 15, 1964 in excess of 150 cases were disposed of. The complaint was withdrawn and charges dismissed on motion of the PEOPLE against all except seven defendants arrested at the Schaeffer Pavilion. The cases arising at the Schaeffer Pavilion were disposed of in a single day.

8. On that day numerous other cases were also disposed of. These dispositions occurred in Part IB and in Part III of the Criminal Court of Queens County. In light of the volume of labor some clerical inaccuracies were inevitable. Although assistant district attorneys, clerks, and attorneys for defendants co-operated to avoid errors, certain discrepancies arose. There was no intent on the part of any judge of the Criminal Court to forfeit bail in any of the Schaeffer Pavilion cases which came up on June 17. On the other hand, remission of bail in the Pollock case, for example could easily have been overlooked by a clerk entering dispositions in a mass of cases many of which involved several charges against each defendant.

9. Under all of the circumstances, deponent believes that bail forfeiture in the case of PEOPLE v. POLLOCK was in fact remitted in open court.

10. In any event, since the case involved charges which the complainant was most reluctant to make in the first place and which were subsequently withdrawn and since the requirement

that defendants appear at adjourned dates was under the circumstances arbitrary and punitive bail should be remitted.

GEORGE SCHIFFER
Office and P.O.Address
40 E. 49th Street
New York, New York 10017

Sworn to before me

this day of 1965

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS : CRIMINAL TERM

- x

THE PEOPLE OF THE STATE OF NEW YORK :

-against- :

THE STUYVESANT INSURANCE COMPANY, :

Surety, :

WALTER HARDY, :

Principal. :

- x

STATE OF NEW YORK)
: ss.:
COUNTY OF QUEENS)

MARTHA K. ZELMAN, being duly sworn, deposes and says that she is an Assistant District Attorney in the office of the District Attorney of Queens County.

This is a motion by the defendant and surety herein for an order rescinding an order of forfeiture entered in the Criminal Court, Queens County on December 14, 1965 because of the defendant's failure to appear pursuant to the terms of a bail bond executed by the surety herein for his appearance.

An examination of the records of the Criminal Court, Queens County discloses that defendant herein was charged with Violation of Section 1990 Subdivision 3 and Section 722 Subdivision 9 of the Penal Law, acting in concert with another, did use loud and boisterous language and did hold the doors of the train open and did prevent passengers from entering or leaving said train and did cause annoy ance and a crowd to collect.

Defendant was arraigned before the Hon. Bernard Dubin and placed in $500.00 bail, and a bench warrant issued.

An examination of the records of the Criminal Court, Queens County made by your deponent discloses that because of the defendant's failure to appear on December 14th, 1965 his bond was forfeited and a bench warrant issued.

Your deponent can find nothing in the record to indicate that this defendant has ever appeared in the court since the bail was forfeited.

That more than a year has elapsed since the date of forfeiture and the defendant has not been produced in court by the surety, and there is no assurance that he will be produced. This motion has been adjourned on two previous occasions.

Under the circumstances the District Attorney asks that this motion be denied with costs.

Sworn to before me this
1st day of February, 1967.

Aurora M. DiPalma

Martha K Zelson

AURORA M. DI PALMA
Notary Public, State of New York
No. 41-6042200 — Queens County
Term Expires March 30, 1968

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS : CRIMINAL TERM

- x

THE PEOPLE OF THE STATE OF NEW YORK :

-against- :

THE STUYVESANT INSURANCE COMPANY, :

Surety, :

ALBERT ADKINS, :

Principal. :

- x

STATE OF NEW YORK)
: ss.:
COUNTY OF QUEENS)

MARTHA K. ZELMAN, being duly sworn, deposes and says that she is an Assistant District Attorney in the office of the District Attorney of Queens County.

This is a motion by the defendant and surety herein for an order rescinding an order of forfeiture entered in the Criminal Court of Queens County on May 14th, 1965 because of the defendant's failure to appear pursuant to the terms of a bail bond posted by the surety herein for his appearance.

An examination of the records of the Criminal Court, Queens County, discloses that the defendant herein was charged with Violation of Section 2036 of the Penal Law, in that the defendant did intrude on real property without having permission of the owner, and without lawful authority. He was arraigned before the Hon. Bernard Dubin who held him in $500.00 bail.

Thereafter the defendant was released when the surety herein posted its bond for the defendant's appearance.

An examination of the records of the Criminal Court made by your deponent discloses that because of the defendant's failure to appear on May 17th, 1965 his bail was forfeited by the Hon. Michael J. Sherwin and a bench warrant issued.

More than one year has elapsed since the date of forfeiture and defendant has not been produced in court by the surety, and there is no assurance that he will be produced by the surety. This motion has been adjourned on nine previous occasions.

Under the circumstances the District Attorney asks that this motion be denied with costs.

Sworn to before me this
1st day of February, 1967.

Aurora M. Di Palma

Martha K. Galvin

AURORA M. DI PALMA
Notary Public, State of New York
No. 41-6042200 — Queens County
Term Expires March 30, 1968

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS : CRIMINAL TERM

- x

THE PEOPLE OF THE STATE OF NEW YORK :

-against- :

THE STUYVESANT INSURANCE COMPANY, :

Surety, :

BILL BROWN, :

Principal. :

- x

STATE OF NEW YORK)
: ss.:
COUNTY OF QUEENS)

MARTHA K. ZELMAN, being duly sworn, deposes and says that she is an Assistant District Attorney in theoffice of the District Attorney of Queens County.

This is a motion by the defendant and surety herein for an order rescinding an order of forfeiture entered in the Criminal Court of Queens County on the 28th day of December, 1965 because of the defendant's failure to appear pursuant to the terms of a bail bond executed by the surety herein for his appearance.

An examination of the records of the court discloses that the defendant herein was arraigned on a charge of Violation of Section 1851 of the Penal Law, in that the defendant did wilfully and unlawfully obstruct, delay a police officer in discharging and attempting to discharge a duty of his office.

Defendant was arraigned before Hon. Bernard Dubin who held him in $500.00 bail.

Thereafter he was released when the surety herein posted its bond for the defendant's appearance.

An examination of the records of the Criminal Court, Queens County, made by your deponent discloses that because of the defendant's failure to appear on December 28th, 1965 his bail was forfeited and a bench warrant issued by the Hon. George J. Balbach.

Your deponent can find nothing in the records to indicate that this defendant has ever appeared in the court since the bail was forfeited. That more than a year has elapsed since the date of forfeiture and the defendant has not been produced in court, and there is no assurance from the surety that he will be produced.

Under the circumstances the District Attorney asks that this motion be denied with costs.

Sworn to before me this
31st day of January, 1967.

Aurora M. DiPalma

Martha K. Zelen

AURORA M. DI PALMA
Notary Public, State of New York
No. 41-6042200 — Queens County
Term Expires March 30, 1968

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS : CRIMINAL TERM

- x

THE PEOPLE OF THE STATE OF NEW YORK :

-against- :

THE STUYVESANT INSURANCE COMPANY, :

Surety, :

LAURRAS HOBBS, :

Principal :

- x

STATE OF NEW YORK)
: ss.:
COUNTY OF QUEENS)

MARTHA K. ZELMAN, being duly sworn, deposes and says that she is an Assistant District Attorney in the office of the District Attorney of Queens County.

This is a motion by the defendant and surety herein for an order rescinding an order of forfeiture entered in the Criminal Court of Queens County the 28th day of December, 1965 because of the defendant's failure to appear pursuant to a bail bond executed by the surety herein for her appearance.

An examination of the records of the Criminal Court discloses that the defendant herein was charged with Violation of Section 2036 of the Penal Law in that the defendant did wilfully and unlawfully intrude upon real property without authority from the owner thereof, and without lawful authority.

She was arraigned before the Hon. Bernard Dubin who held her in $500.00 bail.

That thereafter on the 28th day of December 1965 the case was called in the Criminal Court and the defendant did not appear.

An examination of the records of the Criminal Court, Queens County made by your deponent discloses that because of defendant's failure to appear her bail was forfeited by the Hon. George J. Balbach on December 28, 1965 and a bench warrant issued.

Your deponent can find nothing in the record to indicate that this defendant has ever appeared in the court since the bail was forfeited.

That more than a year has elapsed since the date of forfeiture and defendant has not been produced in court by the surety and there is no assurance that she will be produced.

Under the circumstances the District Attorney asks that this motion be denied with costs.

Sworn to before me this
30th day of January, 1967.

Aurora M. DiPalma

Martha I. Gellen

AURORA M. DI PALMA
Notary Public, State of New York
No. 41-0042200 — Queens County
Term Expires March 30, 1968

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS : CRIMINAL TERM

- x

THE PEOPLE OF THE STATE OF NEW YORK :

-against- :

THE STUYVESANT INSURANCE COMPANY, :

Surety, :

FRANK ROBERSON, :

Principal. :

- x

STATE OF NEW YORK)
: ss.:
COUNTY OF QUEENS)

MARTHA K. ZELMAN, being duly sworn, deposes and says that she is an Assistant District Attorney in the office of the District Attorney of Queens County.

This is a motion by the defendant and surety herein for an order rescinding an order of forfeiture entered in the Criminal Court of Queens County on August 13, 1964 because of the defendant's failure to appear pursuant to the terms of a bail bond executed by the surety herein for his appearance.

An examination of the records of the Criminal Court discloses that the defendant herein was charged with Violation of Section 2036 of the Penal Law, in that the defendant did intrude on real property without having the permission of the owner and without lawful authority.

The defendant herein was arrested and arraigned on April 23, 1964 and Judge Dubin set bail in the sum of $500.00.

Thereafter the defendant was released when the surety herein posted its bond for the defendant's appearance.

An examination of the records of the Criminal Court made by your deponent discloses that because of the defendant's failure to appear on August 11, 1964 his bail was forfeited by the Hon. James E. Lo Piccolo, and a bench warrant issued.

Your deponent can find nothing in the record to indicate that this defendant has ever appeared in the court since the bail was forfeited.

Under the circumstances, the District Attorney asks that this motion be denied with costs.

Sworn to before me this
30th day of January, 1967.

Aurora M. Di Palma

Martha C. Zelman

AURORA M. DI PALMA
Notary Public, State of New York
No. 41-6042200 — Queens County
Term Expires March 30, 1968

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS : CRIMINAL TERM

- x

THE PEOPLE OF THE STATE OF NEW YORK :

-against- :

THE STUYVESANT INSURANCE COMPANY, :

Surety, :

WALTER HARDY, :

Principal. :

- x

STATE OF NEW YORK)
: ss.:
COUNTY OF QUEENS)

MARTHA K. ZELMAN, being duly sworn, deposes and says that she is an Assistant District Attorney in the office of the District Attorney of Queens County.

This is a motion by the defendant and surety herein for an order rescinding an order of forfeiture entered in the Criminal Court, Queens County on December 14, 1965 because of the defendant's failure to appear pursuant to the terms of a bail bond executed by the surety herein for his appearance.

An examination of the records of the court discloses that defendant herein was charged with Violation of Section 1851 of the Penal Law, in that, he did, while acting in concert with others, resist arrest, and did obstruct the officer in the discharge of his duties.

Defendant was arraigned before theHon. Bernard Dubin who held him in $500.00 bail.

Thereafter the defendant was released when the surety herein posted its bond for the defendant's appearance.

An examination of the records of the Criminal Court, Queens County, discloses that because of the defendant's failure to appear on December 14, 1965 his bail was forfeited and a bench warrant issued.

Your deponent can find nothing in the record to indicate that this defendant has ever appeared in the court since the bail was forfeited.

That more than a year has elapsed since the date of forfeiture and the defendant has not been produced in court by the surety, and there is no assurance that he will be produced. This motion has been adjourned on two previous occasions.

Under the circumstances the District Attorney asks that this motion be denied with costs.

Sworn to before me this
1st day of February, 1967.

Aurora M. Di Palma

Matthew J. Zelman

AURORA M. DI PALMA
Notary Public, State of New York
No. 41-6042200 — Queens County
Term Expires March 30, 1968

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS : CRIMINAL TERM

- x

THE PEOPLE OF THE STATE OF NEW YORK :

-against- :

THE STUYVESANT INSURANCE COMPANY, :

Surety, :

HENRY DOCTOR, :

Principal. :

- x

STATE OF NEW YORK)
: ss.:
COUNTY OF QUEENS)

MARTHA K. ZELMAN, being duly sworn, deposes and says that she is an Assistant District Attorney in the office of the District Attorney of Queens County.

This is a motion by the defendant and surety herein foran order rescinding an order of forfeiture entered in the Criminal Court of Queens County on April 27, 1965 because of the defendant's failure to appear pursuant to the terms of a bail bond posted by the surety herein for his appearance.

An examination of the records of the Criminal Court, Queens County, discloses that the defendant herein was charged with Violation of Section 2036 of the Penal Law, in that the defendant did intrude on real property without having permission of the owner, and without lawful authority. He was arraigned before the Hon. Bernard Dubin who held him in $500.00 bail.

Thereafter the defendant was released when the surety herein posted its bond for defendant's appearance.

An examination of the records of the Criminal Court, Queens County made by your deponent discloses that because of the defendant's failure to appear on April 27, 1965 his bail was forfeited by the Hon. Michael J. Sherwin and a bench warrant issued.

Your deponent can find nothing in the record to indicate that this defendant has ever appeared in the court since the bail was forfeited..

That more than one year has elapsed since the date of forfeiture and defendant has not been produced in court by the surety, and there is no assurance that he will be produced by the surety. This motion has been adjourned on nine previous occasions.

Under the circumstances the District Attorney asks that this motion be denied with costs.

Sworn to before me this
1st day of February, 1967.

Aurora M. Di Palma

Martha K. Zelman

AURORA M. Di PALMA
Notary Public, State of New York
No. 41-6042200 — Queens County
Term Expires March 30, 1968

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS : CRIMINAL TERM

- x

THE PEOPLE OF THE STATE OF NEW YORK :

-against- :

THE STUYVESANT INSURANCE COMPANY, :

Surety, :

ALBERT ADKINS, :

Principal. :

- x

STATE OF NEW YORK)
: ss.:
COUNTY OF QUEENS)

MARTHA K. ZELMAN, being duly sworn, deposes and says that she is an Assistant District Attorney in the office of the District Attorney of Queens County.

This is a motion by the defendant and surety herein for an order rescinding an order of forfeiture entered in the Criminal Court of Queens County on May 14, 1965 because of the defendant's failure to appear pursuant to the terms of a bail bond executed for his appearance by the surety herein.

An examination of the records of the court discloses that the defendant herein was charged with Violation of Section 1851 of the Penal Law, in that, the defendant did wilfully and unlawfully obstruct, delay and resist a police officer in the lawful performance of his duty.

Defendant was arraigned before the Hon. Bernard Dubin, who held him in $500.00 bail. Thereafter the defendant was released when the surety herein posted its bond for his appearance.

An examination of the records of the Criminal Court Queens County discloses that because of the defendant's failure to appear on May 14, 1965 his bail was forfeited by the Hon. Mitchell J. Sherwin and a bench warrant issued.

That more than one year has elapsed since the date of forfeiture and the defendant has not been produced in court by the surety and there is no assurance that he will be produced. This motion had been adjourned on nine previous occasions.

Under the circumstances the District Attorney asks that this motion be denied with costs.

Sworn to before me this
31st day of January, 1967.

Aurora M. Di Palma

Martha K. Bellman

AURORA M. DI PALMA
Notary Public, State of New York
No. 41-6042200 — Queens County
Term Expires March 30, 1968

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS : CRIMINAL TERM

- x

THE PEOPLE OF THE STATE OF NEW YORK :

-against- :

THE STUYVESANT INSURANCE COMPANY, :

Surety, :

BILL BROWN, :

Principal. :

- x

STATE OF NEW YORK)
: ss.:
COUNTY OF QUEENS)

MARTHA K. ZELMAN, being duly sworn, deposes and says that she is an Assistant District Attorney in the office of the District Attorney of Queens County.

This is a motion by the defendant and surety herein for an order rescinding an order of forfeiture entered in the Criminal Court of Queens County on December 28, 1965 because of the defendant's failure to appear pursuant to the terms of a bail bond executed by the surety herein for his appearance.

An examination of the records of the Criminal Court discloses that the defendant herein was charged with Violation of Section 2036 of the Penal Law, in that, he did wilfully and unlawfully intrude upon real property without authority from the owner thereof, and without lawful authority.

Defendant was arraigned before the Hon. Bernard Dubin, who held him in $500.00 bail. That thereafter he was released when the surety herein posted its bond for the defendant's appearance.

An examination of the records of the Criminal Court, Queens County, made by your deponent, discloses that because of the defendant's failure to appear on December 28th, 1965 his bail was forfeited and a bench warrant was issued by the Hon. George J. Balbach.

Your deponent can find nothing in the record to indicate that this defendant has ever appeared in the court since the bail was forfeited.

More than one year has elapsed since the date of forfeiture and defendant has not been produced in court by the surety and there is no assurance that he will be produced by the surety. This motion has been adjourned on three previous occasions.

Under the circumstances the District Attorney asks that this motion be denied with costs.

Sworn to before me this
31st day of January, 1967.

Aurora M. DiPalma

Matthew I. Bell

AURORA M. DiPALMA
Notary Public, State of New York
No. 41-6042200 — Queens County
Term Expires March 30, 1968

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS : CRIMINAL TERM

- x

THE PEOPLE OF THE STATE OF NEW YORK :

-against- :

THE STUYVESANT INSURANCE COMPANY, :

Surety, :

FRANK ROBERSON, :

Principal. :

- x

STATE OF NEW YORK)
: ss.:
COUNTY OF QUEENS)

MARTHA K. ZELMAN, being duly sworn, deposes and says that she is an Assistant District Attorney in the office of the District Attorney of Queens County.

This is a motion by the defendant and surety herein for an order rescinding an order of forfeiture entered in the Criminal Court of Queens County on August 11th, 1964 because of the defendant's failure to appear pursuant to the terms of a bail bond executed by the surety herein for his appearance.

The defendant herein was arrested and arraigned on April 22nd, 1964 charged with having violated Section 1851 of the Penal Law, and the matter was adjourned by Judge Dubin to May 25, 1964 who set the bail in the sum of $500.00.

Thereafter the defendant was released when the surety herein posted its bond for his appearance.

An examination of the records of the Criminal Court, Queens County, made by your deponent discloses that because of the defendant's failure to appear on August 11, 1964 his bail was forfeited by the Hon. James E. LoPiccolo and a bench warrant issued.

Your deponent can find nothing in the record to indicate that this defendant has ever appeared in the court since the bail was forfeited.

That more than two years has elapsed since the date of the forfeiture and the defendant has not been produced in court by the surety, and there is no assurance that he will be produced. This motion had been adjourned on fourteen occasions.

Under the circumstances the District Attorney asks that this motion be denied with costs.

Sworn to before me this
30th day of January, 1967.

Aurora M. DiPalma

Matthew K. Zelman

AURORA M. DI PALMA
Notary Public, State of New York
No. 41-6042200 — Queens County
Term Expires March 30, 1968

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS : CRIMINAL TERM

- x

THE PEOPLE OF THE STATE OF NEW YORK :

-against- :

THE STUYVESANT INSURANCE COMPANY, :

Surety, :

HENRY DOCTOR, :

Principal. :

- x

STATE OF NEW YORK)
: ss.:
COUNTY OF QUEENS)

MARTHA K. ZELMAN, being duly sworn, deposes and says that she is an Assistant District Attorney in the office of the District Attorney of Queens County.

This is a motion by the defendant and surety herein for an order rescinding an order of forfeiture entered in the Criminal Court of Queens County on April 27th, 1965 because of the defendant's failure to appear pursuant to the terms of a bail bond posted by the surety herein for his appearance.

An examination of the records of the Criminal Court discloses that the defendant was charged with Violation of Section 1851 of the Penal Law, in that, the defendant did wilfully and unlawfully obstruct, delay and resist a police officer in the lawful performance of his duty.

Defendant was arraigned before the Hon. Bernard Dubin who held him in $500.00 bail.

Thereafter the defendant was released when the surety herein posted its bond for defendant's appearance.

An examination of the records of the Criminal Court, Queens County, made by your deponent, discloses that because of the defendant's failure to appear on April 27, 1965 his bail was forfeited by the Hon. Michael J. Sherwin, and a bench warrant issued.

Your deponent can find nothing in the record to indicate that this defendant has ever appeared in the court since the bail was forfeited.

That more than a year has elapsed since the date of forfeiture and the defendant has not been produced in court by the surety, and there is no assurance that he will be produced. This motion has been adjourned on nine previous occasions.

Under the circumstances the District Attorney asks that this motion be denied with costs.

Sworn to before me this
1st day of February, 1967.

Aurora M. Di Palma

Martha K. Gelb

AURORA M. DI PALMA
Notary Public, State of New York
No. 41-6042200 — Queens County
Term Expires March 30, 1968

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS : CRIMINAL TERM

- x

THE PEOPLE OF THE STATE OF NEW YORK :

-against- :

THE STUYVESANT INSURANCE COMPANY, :

Surety, :

LAURRAS HOBBS, :

Principal. :

- x

STATE OF NEW YORK)
: ss.:
COUNTY OF QUEENS)

MARTHA K. ZELMAN, being duly sworn, deposes and says that she is an Assistant District Attorney in the office of the District Attorney of Queens County.

This is a motion by the defendant and surety herein for an order rescinding an order of forfeiture entered in the Criminal Court of Queens County on December 28, 1965.

An examination of the records of the Criminal Court of Queens County discloses that because of the defendant's failure to appear on December 28th, 1965 her bail was forfeited by Hon. George J. Balbach and a bench warrant issued.

Your deponent can find nothing in the record to indicate that this defendant has ever appeared in the court since the bail was forfeited.

That more than a year has elapsed since the date of the forfeiture and the defendant has not been produced in court by the surety, and there is no assurance that she will

be produced.

Under the circumstances the District Attorney asks that this motion be denied with costs.

Sworn to before me this
30th day of January, 1967.

Aurora M. DiPalma

Matthew K. Zelman

AURORA M. DI PALMA
Notary Public, State of New York
No. 41-6042200 — Queens County
Term Expires March 30, 1968

At a Motion of the Supreme Court held in and for the County of New York at the 60 Centre St. Courthouse, County of the City of New York, on the ---- day of September 1967.

PRESENT: Hon. Frederick Backer
Justice, Supreme Court

- x

County Clerk
Index No. 16614-65

PEOPLE OF THE STATE OF NEW YORK,

-against-

STUYVESANT INSURANCE COMPANY,
Surety,

-for-

ELAINE BIBULD,
Principal.

- -x

Stuyvesant Insurance Company, the surety above named having moved this Court for an order vacating the forfeiture of the undertaking executed by Elaine Bibuld as principal and said Stuyvesant Insurance Company, as surety entered in the Office of the Clerk of New York County on the 19th day of November, 1964, and said motion having duly come on to be heard.

Now on reading and filing the notice of motion herein dated the 26th day of October 1965, together with proof of due service thereof, the affidavit of Stephen M. Nagler, duly sworn to the 26th day of October, 1965, the affidavit of Carl Rachlin duly sworn to the 27th day of October, 1965, and the affidavit of John E. Silverberg, Esq., with exhibit annexed, sworn to July 18, 1967, showing that the People of the State of New York have lost no rights and that the Principal's failure to appear was justified and after hearing Stephen M. Nagler, attorney for the above named surety in favor of said motion and Hon. Frank Hogan, Esq., District Attorney of New York County appearing in opposition, and upon reading the affidavits

of Edwin W. Kapusta dated July 13th and July 20th, 1967 in opposition, with exhibits attached thereto, and due deliberation having been had thereon, it, on motion of Stephen M. Nagler, attorney for the surety,

ORDERED that the said motion be and the same hereby is granted, and it further

ORDERED that the forfeiture of the undertaking of bail heretofor executed by Elaine Bibuld as principal and Stuyvesant Insurance Company a surety, which said forfeiture was entered on the 28th day of October, 1964, and the same herby is in all respects vacated and set aside, and it is further

ORDERED that the judgement in the sum of $500.- entered upon said undertaking so forfeited in the office of the Clerk of the County of New York on November 19th, 1964, be and the same hereby is vacated and the Clerk of the County of New York upon being served with certified copy of this order is hereby directed to make a note of the vacation of said judgement on all indices and records of said judgement contained in his office referring to this order, and it is further

ORDERED that a copy of this order with notice of entry thereof be served on the District Attorney of New York County within 10 days after entry thereof.

Enter

_____

Justice, Supreme Court

SUPREME COURT OF THE
STATE OF NEW YORK
COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK: Plaintiff against THE STUYVESANT INSURANCE COMPANY Surety for ELAINE BIBULD Principal	AFFIDAVIT IN OPPOSITION

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

EDWIN W. KAPUSTA, being duly sworn, deposes and says:

I am a Head Clerk employed by the District Attorney's office in charge of records kept by the Bail Bond Bureau. I am familiar with the facts of this case.

The defendant, Elaine Bibuld, on March 27, 1964 at Part LB, of the Criminal Court was charged with the crime of unlawfull trespass and various other charges. At that time the defendant was bailed by the Stuyvesant Insurance Co. in the amount of Five hundred dollars. After several adjournments the defendant failed to appear on October 28, 1964 and bail was forfeited. Judgment was entered on November 19, 1964. The defendant finally appeared on September 14, 1965 some eleven months after the forfeiture.

No affidavit is submitted by the defendant explaining her non-appearance, but an affidavit is submitted by an attorney stating that the defendant was mis-informed as to the return date. Numerous adjournments have been granted to the moving party to supply further information but at this date no new papers have been submited.

WHEREFORE, the People respectfully oppose the application for remission of the forfeiture.

DOLORES A. KNOPFLE
Notary Public, State of New York
No. 41-7316862
Certificate Filed in [illegible] County
Term Expires March 30, 1968

Sworn to before me this
day of July, 1967

EDWIN W. KAPUSTA

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK,

Plaintiff,

-against-

STUYVESANT INSURANCE COMPANY,
Surety,

-for-

ELAINE BIBULD,
Principal.

SUPPLEMENTARY AFFIDAVIT.

STATE OF NEW YORK)
: SS:
COUNTY OF NEW YORK)

JOHN E. SILVERBURG, Esq., Being Duly Sworn Deposes and Says:

1. I am an attorney admitted to practice before the Supreme Court of the State of New York.

2. I represent and at all times pertinent hereto have represented Elaine Bibuld, the principal herein in the case of People v. Elaine Bibuld (Docket # 3029-64).

3. On or about April 29th, 1964 the case of People v. Elaine Bibuld was removed to the United States District Court for the Southern District of New York, along with several other cases, by the filing of a Petition for Removal dated April 29, 1964 and filed in the office of the Clerk of said District Court. A copy of the petition was served on the Clerk of the Criminal Court of the City of New York thereby depriving said Criminal Court of any and all jurisdiction over Elaine Bibuld and her co-defendants, pursuant to 28 U.S.C. § 1446 (C) (1958).

4. On September 1st, 1964, the lack of jurisdiction of the aforementioned Criminal Court was continued by an order staying the remand of the case of People v. Elaine Bibuld, signed by Hon. Sterry R. Waterman, Judge of the United States Court of Appeals for the Second Circuit. That and a subsequent stay were continued in effect until April 26, 1965 when the Supreme Court of the United States denied certiorari on an appeal from an order remanding the case of People v. Galamison, et al, (342 F 2d 255, 85 Sup. Ct. 1342 (1965)). A copy of the stay is annexed hereto and made a part hereto.

5. As a result of the petition for removal and the stay mentioned above the Criminal Court of the City of New York was completely void of jurisdiction over Elaine Bibuld until April 26, 1965, in the case of People v. Elaine Bibuld (Docket #3029-64). Thus any order in that case including an order forfeiting bail on October 28, 1964 was totally void since the case was not properly before the said Criminal Court on that date. 28 U.S.C. § 1446 (C) (1958).

6. Elaine Bibuld was present in Criminal Court with me when a Judge of said Court marked her case "off calendar" without any adjourned date due to lack of jurisdiction of the said Criminal Court over her case and she believed that she need not appear until given further notice.

7. I also recall that without notice to counsel or defendants, the case suddenly appeared on the calendar in the fall of 1964 and as a result Elaine Bibuld had to be surrendered on a warrant.

8. An examination of the original papers in the case confirms that Elaine Bibuld was present with me on November 6th, 1964 before Hon. Alfred J. Cawse, Jr., Judge of the

Criminal Court of the City of New York, in part I B of the said Criminal Court in the County of New York. On this occasion Judge Cawse vacated a warrant for the arrest of Elaine Bibuld.

WHEREFORE, I respectfully join in the request that the bail forfeiture be remitted.

John E. Silverberg

John Silverberg, ~~Esq.~~

Sworn to before me

this 18 day of July, 1967

JOSEPH A. FONTANELLI, JR.
NOTARY PUBLIC, STATE OF NEW YORK
No. 31-6352350
Qualified in New York County
Commission Expires March 30, 19~~7~~8

United States Court of Appeals

SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the first day of September , one thousand nine hundred and sixty-four.

Present:

HON. STERRY R. WATERMAN,

Circuit Judge.

William Deutsch,
Petitioner-Appellant,
v.
The City of New York,
Respondent-Appellee.

Norman Berkowitz,
Petitioner-Appellant,
v.
The City of New York,
Respondent-Appellee.

Frances Crayton, et al.,
Petitioners-Appellants,
v.
The City of New York,
Respondent-Appellee.

A motion having been made herein by counsel for the petitioners-appellants for a stay pending appeal,

Upon consideration thereof, it is

Ordered that said motion be and it hereby is granted pending a hearing and determination of the appeals on condition that the appellants file their briefs and appendices on or before September 11, 1964 and that the appellee file its brief and appendix on or before September 24, 1964.

Further ordered that the argument of the appeals be and they hereby are set for the week of September 28, 1964.

Further ordered that all parties may file four typewritten or mimeographed copies of their briefs and appendices in lieu of printed copies.

Further ordered that if appellants fail to file briefs and appendices on or before September 11, 1964 and to otherwise comply with the rules of this court, the court will entertain a motion by the appellee to vacate the stay.

A. DANIEL FUSARO
Clerk

By VINCENT A. CARLIN
Chief Deputy Clerk

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK
Plaintiff

against

THE STUYVESANT INSURANCE CO
Surety

for

ELAINE BIBULD
Principal

SUPPLEMENTARY AFFIDAVIT IN OPPOSITION

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

EDWIN W. KAPUSTA, being duly sworn deposes and says:

I am a Head Clerk employed by the District Attorney's Office in charge of records kept by the Bail Bond Bureau.

Photostats of the original court papers which are attached will show that the Court was aware of the proceedings in the United States Circuit Court, and that the case was adjourned to October 28, 1964 and that the defendants were to appear. It will also be noted that on that day all defendants appeared but two.

It will also be noted that there is no notation on the Criminal Court papers that Elaine Bibuld appeared on November 6, 1964.

WHEREFORE, the People respectfully oppose the application for remission of the forfeiture.

Sworn to before me this
20th day of July 1967

Edwin W. Kapusta

Assistant Court Clerk - Wilson

CRIMINAL COURT OF THE CITY OF NEW YORK

PART 2A, COUNTY OF Queens, DATE Dec 14, 1965

JUDGE, DIST. ATTY., COURT REPORTER

Cal No.	Docket Number	Name of Defendant	Charge	Officer & assign.	prev. adjo.	Disposition
E	B1816	Milton Galamison	Dis Con	Kelleher 112 Pct	4	Dismissed
2	B1817	Gilbert Banks Pet	do	Burke 110 Pct	4	"
	B1818	John Cronick	do	do	4	"
	B1819	Marjorie Napper	do	do	4	"
3	B1820	Gilbert Banks	1851 PL	do	4	"
	B1821	John Cronick	do	do	4	"
	B1822	Marjorie Napper	do	do	4	"
4	B1823	Frances Crayton	Dis Con	Kelleher 112 PCt	4	"
	1824	Elaine AVidon	do	dom	4	"
	B1825	Sheila Benshak	do	do	4	"
	B1826	Samuel Kinch	do	do	4	
	B1827	Ida Posner	do	do	4	"
	B1828	Gerald Covicé	do	do	4	"
5	B1829	Frances Crayton	1851 PL	do	4	"
	B1830	Elaine Avidon	do	dO	4	"
	B1831	Sheila Gershad	do	do	4	"
	B1832	Samuel Kinch	do	do	4	
	B1833	Ida Posner	do	do	4	"
	B1834	Gerald Covici	do	do	4	"
6	B1830	Elaine Avidon	do	do	4	"
7	B1831	Sheila Bershad	do	do	4	"
8	B1833	Idda Posner	do	do	4	"
9	B1834	Gerald Covici	do	do	4	"
10	B1864	Dorothy Fulmer	2036	do	4	"
11	B1865	Dorothy Fulmer	Dis Con	Terry'bey	4	"
12	B1866	Jerome Bibuld	2036	Mugan WFP	4	"
13	B1867	Jerome Bibuld	Dis Con	do	4	"
14	B2206	Nelson Dukes	do	Arnold TPF	4	"
15	B1868	Isaiah Brunson	2036	McClafferty WFP	4	
	B1869	Angie Eggerton	do	do	4	

	Total	Disposed	Adjourned
NEW CASES			
OLD CASES			

Assistant Court Clerk - Wilson

CRIMINAL COURT OF THE CITY OF NEW YORK

PART 2A, COUNTY OF Queens, DATE Dec 14, 1965

JUDGE, DIST. ATTY., COURT REPORTER

Cal No.	Docket Number	Name of Defendant	Charge	Officer & assign.	prev. adjs.	Disposition
E	B1816	Milton Galamison	Dis Con	Kelleher 112 Pct	4	Dismissed
2	B1817	Gilbert Banks Pet	do	Burke 116 Pct	4	"
	B1818	John Cronick	do	do	4	"
	B1819	Marjorie Napper	do	do	4	"
3	B1820	Gilbert Banks	1851 PL	do	4	"
	B1821	John Cronick	do	do	4	"
	B1822	Marjorie Napper	do	d o	4	"
4	B1823	Frances Crayton	Dis Con	Kelleher 112 PCt	4	"
	1824	Elaine AVidon	do	dor	4	"
	B1825	Sheila Bernshak	do	do	4	"
	B1826	Samuel Kinch	do	do	4	
	B1827	Ida Posner	do	do	4	"
	B1828	Gerald Covicé	do	do	4	"
5	B1829	Frances Crayton	1851 PL	do	4	"
	B1830	Elaine Avidon	do	dO	4	"
	B1831	Sheila Gershad	do	do	4	"
	B1832	Samuel Kinch	do	do	4	
	B1833	Ida Posner	do	do	4	"
	B1834	Gerald Covici	do	do	4	"
6	B1830	Elaine Avidon	do	do	4	"
7	B1831	Sheila Bernshad	do	do	4	"
8	B1833	Idda Posner	do	do	4	"
9	B1834	Gerald Covici	do	do	4	"
10	B1864	Dorothy Fulmer	2036	do	4	"
11	B1865	Dorothy Fulmer	Dis Con	Terry'bey	4	"
12	B1866	Jerome Bibuld	2036	Mugan WFP	4	"
13	B1867	Jerome Bibuld	Dis Con	do	4	"
14	B2206	Nelson Dukes	do	Arnold TPF	4	"
15	B1868	Isaiah Brunson	2036	McClafferty WFP	4	
	B1869	Angie Eggerton	do	do	4	

	Total	Disposed	Adjourned
NEW CASES			
OLD CASES			

Assistant Court Clerk - Wilson

CRIMINAL COURT OF THE CITY OF NEW YORK

PART 2A, COUNTY OF Queens DATE Dec 14, 1965

JUDGE DIST. ATTY. COURT REPORTER

Cal No.	Docket Number	Name of Defendant	Charge	Officer & assign.	prev. adjo.	Disposition
E	B1816	Milton Galamison	Dis Con	Kelleher 112 Pct	4	Dismissed
2	B1817	Gilbert Banks Pct	do	Burke 110 Pct	4	"
	B1818	John Cronick	do	do	4	"
	B1819	Marjorie Napper	do	do	4	"
3	B1820	Gilbert Banks	1851 PL	do	4	"
	B1821	John Cronick	do	do	4	"
	B1822	Marjorie Napper	do	d o	4	"
4	B1823	Frances Crayton	Dis Con	Kelleher 112 PCt	4	"
	1824	Elaine AVidon	do	dor	4	"
	B1825	Sheila Benshak	do	do	4	"
	B1826	Samuel Kinch	do	do	4	
	B1827	Ida Posner	do	do	4	"
	B1828	Gerald Covici	do	do	4	"
5	B1829	Frances Crayton	1851 PL	do	4	"
	B1830	Elaine Avidon	do	dO	4	"
	B1831	Sheila Gershad	do	do	4	"
	B1832	Samuel Kinch	do	do	4	
	B1833	Ida Posner	do	do	4	"
	B1834	Gerald Covici	do	do	4	"
6	B1830	Elaine Avidon	do	do	4	"
7	B1831	Sheila Bershad	do	do	4	"
8	B1833	Idda Posner	do	do	4	"
9	B1834	Gerald Covici	do	do	4	"
10	B1864	Dorothy Fulmer	2036	do	4	"
11	B1865	Dorothy Fulmer	Dis Con	Terry'bey	4	"
12	B1866	Jerome Bibuld	2036	Mugan WFP	4	"
13	B1867	Jerome Bibuld	Dis Con	do	4	"
14	B2206	Nelson Dukes	do	Arnold TPF	4	"
15	B1868	Isaiah Brunson	2036	McClafferty WFP	4	
	B1869	Angie Eggerton	do	do	4	

	Total	Disposed	Adjourned
NEW CASES			
OLD CASES			

Assistant Court Clerk - Wilson

CRIMINAL COURT OF THE CITY OF NEW YORK

PART 2A, COUNTY OF Queens, DATE Dec 14, 1965

JUDGE, DIST. ATTY., COURT REPORTER

Docket Number	Name of Defendant	Charge	Officer & assign.	prev. adjo.	Disposition
B1816	Milton Galamison	Dis Con	Kelleher 112 Pct	4	Dismissed
B1817	Gilbert Banks Pct	do	Burke 116 Pct	4	"
B1818	John Cronick	do	do	4	"
B1819	Marjorie Napper	do	do	4	"
B1820	Gilbert Banks	1851 PL	do	4	"
B1821	John Cronick	do	do	4	"
B1822	Marjorie Napper	do	d o	4	"
B1823	Frances Crayton	Dis Con	Kelleher 112 PCt	4	"
1824	Elaine AVidon	do	dom	4	"
B1825	Sheila Bensbak	do	do	4	"
B1826	Samuel Kinch	do	do	4	
B1827	Ida Posner	do	do	4	"
B1828	Gerald Covicè	do	do	4	"
B1829	Frances Crayton	1851 PL	do	4	"
B1830	Elaine Avidon	do	dO	4	"
B1831	Sheila Gershad	do	do	4	"
B1832	Samuel Kinch	do	do	4	
B1833	Ida Posner	do	do	4	"
B1834	Gerald Covici	do	do	4	"
B1830	Elaine Avidon	do	do	4	"
B1831	Sheila Bershad	do	do	4	"
B1833	Idda Posner	do	do	4	"
B1834	Gerald Covici	do	do	4	"
B1864	Dorothy Fulmer	2036	do	4	"
B1865	Dorothy Fulmer	Dis Con	Terry'bey	4	"
B1866	Jerome Bibuld	2036	Mugan WFP	4	"
B1867	Jerome Bibuld	Dis Con	do	4	"
B2206	Nelson Duftes	do	Arnold TPF	4	"
B1868	Isaiah Brunson	2036	McClafferty WFP	4	
B1869	Angie Eggerton	do	do	4	

	Total	Disposed	Adjourned
NEW CASES			
OLD CASES			

CRIMINAL COURT OF THE CITY OF NEW YORK

PART 2a, COUNTY OF Queens DATE DEc14 1965

JUDGE DIST. ATTY COURT REPORTER

Cal No.	Docket Number	Name of Defendant	Charge	Officer & assigned	Prev. Offs.	Disposition
16	B1850	Martin Boksenbaum	1851 PL	Barberman 110 Pct	4	Dismissed
	B1851	Stanley Brezenoff	do	do	4	"
	B1852	Herbert Callender	do	do	4	"
	B1853	Bonnie /Finkelstein	do	do	4	"
	B1854	Percy Gilmer	do	do	4	
	B1855	Nases Kandel	do	do	4	"
	B1856	Sandra Levinson	do	do	4	"
	B1862	Lynn Skolnick	do	do	4	
	B1857	Lee Howe	do	do	4	"
	B1858	Erika Mitchell	do	do	4	"
	B1859	Stanley Murray	do	do	4	
	B1860	Howard Quander	do	dO	4	"
	B1861	Joyce Schurik	do	do	4	"
17	B2207	Philip Koplin	Dis Con	Frisher 109	PCt	"
18	B1870	Isiah Brunson	do	McLafferty WFP	4	
	B1871	Angel Eggeston	do	do	4	
19	B2208	Walter Flesch	1851 PL	Ferguson 17 Div	4	"
20	B2209	Walter Flesch	Dis Con	do	4	"
21	B2213	Marjorie Napper	1851 PL	Vitale TP	4	"
22	B2214	Marjorie Napper	Dis Con	do	4	"
23	B2215	Marjorie Napper	1990 PL	do	4	Plea Guilty $5.00 fine Prints
24	B2216	Kenneth Rice	Dis Con	Gross TP	4	Dismissed
25	B2217	Kenneth Rice	1990 APL	Do	4	Plea Guilty $5.00 fine
26	B2218	Kenneth Rice	1851 PL	do	4	Dismissed
27	B2219	Bruce Powsner	do	Taylor TP	4	Plea $5.00 fine SS
28	B2221	Bruce Powsner	1990 PL	do	4	Dismissed
29	B2220	Bruce Powsner	Dis Con	do	4	Dismissed
30	B2222	Michael Zagarell	1851 PL	Hill TP	4	Dismissed
31	B2223	Michael Zagarell	Dis Con	do	4	"
32	B2224	Michael Zagarell	1990 PL	do		Plea Guilty $5.00 fine Prints

	Total	Disposed	Adjourned
NEW CASES			
OLD CASES			

CRIMINAL COURT OF THE CITY OF NEW YORK

PART 2A, COUNTY OF Queens DATE DEd 11/1965

JUDGE DIST. ATTY. COURT REPORTER

Col. No.	Docket Number	Name of Defendant	Charge	Officer & assign.	prov. adjs.	Disposition
33	B2227	Rafael Delgado	Dis Con	Tarpey 107 Pct		
34	B2228	Rafael Delgado	1851 PL	do		
35	B2234	Herbert Callender	do	Mullet 107 Div		Dismissed
36	B2235	Herbert Callender	Dis Con	do		Dismissed
37	B2602	Andy Young	do	Mooney WEP		
38	B2210	Gilbert Banks	1851 PL	Fitzgerald 107 P		Dismissed
39	B2211	Gilbert BAnks	Dis Con	do		"

	Total	Disposed	Adjourned
NEW CASES			
OLD CASES			

CRIMINAL COURT OF THE CITY OF NEW YORK Dec 14

PART 24, COUNTY OF Queens DATE ~~Sept. 22~~, 1965

JUDGE DIST. ATTY COURT REPORTER

Cal No.	Docket Number	Name of Defendant	Charge	Officer & assign.	Prev. adjs.	Disposition
1	949	Sandra Sabler	1851PL	Ptl.Farberman,110	4	Dismissed
2	1130	Sandra Sabler	1851	Ptl. Dall, TP	4	"
3.	960	Sandra Sabler	Dis Con	Ptl. Farberman	4	"
4.	1131	Sandra Sabler	1.1990	Ptl. Dall, TP	4	Plea Guilty $5.00
5.	1795	Sandra Sabler	Dis Con	Ptl. Farberman	4	Dismissed
6.	948	Jeremiah Teahan	1851PL	"	4	12/15/65 Dismissed
7.	961	Jeremiah Tehahn	Dis Con	"	4	12/15 "
8.	1126	Jeremiah Teahan	1851 PL	Ptl. Diamond,TA	4	12/15 "
9.	1127	Jeremiah Teahan	1.1990	" 110	4	12/15 Plea Guilty $5.00 - Points
10.	1796	Jeremiah Teahan	Dis Con	Ptl. Farberman	4	12/15 Dismissed
11.	958	Samuel Kinch	1851 PL	Ptl. Kelleher,112	4	
12.	959	Samuel Kinch	Dis Con	"	4	
13.	1737	Samuel Kinch	1851PL	"	4	
14.	1744	Samuel Kinch	Dis Con	"	4	
15	1116	Ellen Hawaley	1851 PL	Polw. Powers,	4	Dismissed
16	1117	Ellen Hawley	Dis Con	"	4	"
17	1118	Robert Heisler	1851 PL	Ptl. Diamond,TP	4	"
18.	1119	Robert Heisler	1.1990	"	4	Plea $5.00
19.	1120	Stephen Torgoff	1851 PL	"	4	Dismissed
20	1121	Stephen Torgoff	1.1190	"	4	Plea - $5.00
21	1122	Melvyn Ownes	1851PL	Ptl. Diamond,TP	4	
22	1123	David Elder	"	"	4	Dismissed
23	1124	Melvin Owens	1.1190	"	4	
24	1125	David Elder	"	"	4	"
25	1128	Mark Brody	1851PL	"	4	Dismissed
26	1129	Mark Brody	1.1990	Ptl. Diamond,TP	4	Plea - $5.00
27	1132	Builder Levy	1.1190	Ptl. Dall, TP	4	Dismissed
28	1133	Paul Heinegg	"	"	4	Plea - $5.00
29	1134	Walter Hardy	"	"	4	
30	1135	Walter Hardy	1851 PL	Ptl Dall, TP	4	

	Total	Disposed	Adjourned
NEW CASES			
OLD CASES			

CRIMINAL COURT OF THE CITY OF NEW YORK

PART 2A2, COUNTY OF Queens DATE Sept. 22, 1965

JUDGE DIST. ATTY. COURT REPORTER

Cal No.	Docket Number	Name of Defendant	Charge	Officer & assign.	prov. asjc.	Disposition
31	1136	Builder Levy	1851 PL	Ptl Dall,TP	4	Dismissed
32	1137	Paul Heinegg	"	"	4	"
33	YO 645	Ronald Coy	YO		16	"
34	1204	Ronald Coy	Dis Con	"	4	"
35	1226	Edward S. Green	1851 PL	Ptl DanielTP	4	Dismissed
36	1227	Edward S. Green	Dis Con	"	4	"
37	1228	Edward S. Green	1990	"	4	Plea-$5.00
38	1229	Sharon L. Eolis	1851 PL	"	4	Dismissed
39	1230	Sharon L. Eolis	Dis Con	"	4	"
40	1231	Sharon L. Eolis	1990 PL	"	4	Plea-$5.00-Prints
41	B1823	Frances Crayton	Dis Con	Kelleher,112 pct.	4	Dismissed
42	B1824	Elaine Avidon	"	"	4	"
43	B1825	Sheila Bershad	"	"	4	"
44	B 1826	Samuel Kinch	"	"	4	
45	B 1827	Ida Posner	"	"	4	"
46	B1828	Gerald Covici	"	"	4	"
47	B1829	Frances Crayton	1851PL	"	4	"
48	B1830	Elaine Avidon	"	"	4	"
49	B1831	Sheila Bershad	"	"	4	"
50	B1832	Samuel Kinch	"	"	4	
51	B1833	Ida Posner	"	"	4	"
52	B1834	Gerald Covici	"	"	4	"
53	B1830	Elaine Avidon	"	"	4	"
54	B1831	Sheila Bershad	"	"	4	"
55	B1833	Ida Posner	"	"	4	"
56	B1834	Gerald Covicei	"	"	4	"
57	B1835	Martin Boksenbaum	Dis Con	Farberman, 110pct.	4	"
58	B1836	Stanley Brezenoff	"	"	4	"
59	B1837	Herbert Callender	"	"	4	"
60	B1838	Bonnie Finkelstein	"	"	4	"

	Total	Disposed	Adjourned
NEW CASES			
OLD CASES			

CRIMINAL COURT OF THE CITY OF NEW YORK

PART 2A2, COUNTY OF Queens DATE Sept. 22, 1965

JUDGE _____ DIST. ATTY. _____ COURT REPORTER _____

Cal No.	Docket Number	Name of Defendant	Charge	Officer & assign.	prev. adjs.	Disposition
61	B1839	Percy Gilmer	Dis Con	Farberman, 110	4	
62	B1840	Nasess Kandel	"	"	4	
63	B1841	Sandra Levinson	"	"	4	
64	B1842	Lee Lowe	"	"	4	
65	B1843	Erika Mitchell	"	"	4	
66	B1844	Stanly Murray	"	"	4	
67	B1845	Howard Quander	"	"	4	
68	B1846?	Joyce Schurik	"	"	4	
69	B1848	Lynn Skolnick	"	"	4	
70	B1850	Martin Boksenbaum	1851PL	"	4	
71	B1851	Stanley Brezenoff	"	"	4	
72	B1852	Herbert Callender	"	"	4	
73	1853	Bonnie Finkelstein	"	"	4	
74	1854	Percy Gilmer	"	"	4	
75	1855	Nases Kandel	"	"	4	
76	1856	Sandra Levinson	"	"	4	
77	1857	Lee Lowe	"	"	4	
78	1858	Erika Mitchell	"	"	4	
79	1859	Stanley Murray	"	"	4	
80	1860	Howard Quander	"	"	4	
81	1861	Joyce Schurik	"	"	4	
82	1862	Lynn Skolnick	"	"	4	

	Total	Disposed	Adjourned
NEW CASES			
OLD CASES			

At a Criminal Term of
the Supreme Court held in
and for the County of Queens
at the Courthouse at 135-01
Queens Boulevard, County of
Queens of the City of New York,
State of New York, on the 27
day of January, 1967.

PRESENT: Hon. Edward Thompson
Justice, Supreme Court

Index No.
204-66

People of the State of New York,

-against-

Stuyvesant Insurance Company,
Surety
-for-

Jeremiah Tehon
Principal

Stuyvesant Insurance Company, the surety above named having moved this Court for an order vacating the forfeiture of the of the undertaking executed by Jeremiah Tehon, as principal and said Stuyvesant Insurance Company, as surety entered in the Office of the Clerk of Queens County on the 11th day of January , 1966, and said motion having duly come on to be heard.

Now on reading and filing the notice of motion herein dated the 6th day of December 1966, together with proof of due service therof, the affidavit of Stephen M. Nagler, duly sworn to the 6th day of December, 1966, and on the consent of the District Attorney of the County of Queens stating that the People of the State of New York have lost no rights and after hearing Stephen M. Nagler, attorney for the above named surety in favor of said motion and Hon. Nat Hentel, District Attorney of Queens County by Lawrence MCGrath, Assistant District Attorney, appearing but not opposing, and due deliberation

Having been had thereon, it is, on motion of Stephen M. Nagler, attorney for the surety,

ORDERED that the said motion be and the same hereby is granted, and it is further

ORDERED that the forfeiture of the undertaking of bail heretofore executed by Jeremiah Tehon as principal and Stuyvesant Insurance Company as surety, which said forfeiture was entered on the 14th day of December 1965, be and the same hereby is in all respects vacated and set aside, and it is further

ORDERED that the judgement in the amount of $500.- entered upon said undertaking so forfeited in the office of the Clerk of the County of Queens on January 11th, 1966, be and the same hereby is vacated and the Clerk of the County of Queens upon being served with a certified copy of this order is hereby directed to make a note of the vacation of said Judgement contained in his office referring to this oreder, and it is further

ORDERED that a copy of this order with notice of entry thereof be served on the District Attorney of Queens County within 10 days after entry thereof.

Enter

★GRANTED
JAN 23 1967
P. L.
CLERK

E. T

Justice, Supreme Court

66 St. Nicholas Place #A-27
New York City 10032
October 24, 1966

Congress of Racial Equality
(National Office)
200 West 135 Street
New York City 10031

Attention: Mrs C. Coleman

Re: FORFEITURE OF BAIL BOND
ISAIAH BROMSON - 3/28/64

Gentlemen:

As per telephone conversation of Friday, October 21, 1966, it is specifically agreed that I, the undersigned, will receive from you (Congress of Racial Equality--National Office) the sum of One Hundred Dollars ($ 100.00) for a period of five (5) months beginning November 1, 1966 and continuing for a period of four (4) consecutive months thereafter; it being understood that payments will be made by you on the first day of each month until the total of Five Hundred Dollars ($ 500.00) is paid to me.

It is further agreed that should the Stuyvesant Insurance Company through its named attorney, or otherwise, demand a further payment from me in the amount of Twenty-two Dollars and Fifty Cents ($22.50) that you will refund this said payment to me on the sixth consecutive month, thereby making the total payment to me Five Hundred and Twenty-two Dollars and Fifty Cents ($ 522.50).

It must be stated here by way of an explanation on the total of Five Hundred and Twenty-two Dollars and Fifty Cents ($ 522.50) that this is the total amount the Stuyvesant Insurance Company claims is due them; however, Mr. Steve Nagler of SEDF suggested that said Stuyvesant Insurance Company may forego the Twenty-two Dollars and Fifty Cents ($ 22.50) and settle for just Five Hundred Dollars ($500.00). I have no confirmation of this from the Stuyvesant Insurance Company.

You should be reminded again that this agreement has to do with the bail bond I posted for Isaiah Bromson on March 28, 1964 and which I later forfeited. I was notified of this forfeiture October 18, 1966. I did it all in the name and for the sake of CORE. A check into the CORE records will show that I posted several such bonds for many arrested CORE members. Messrs. Herb Callender, Sol Herbert, Howard Quander, and Carl Rachlin are all familiar with my work in and for CORE.

If there is anything further you need to know about this matter, please feel free to call on me.

Fraternally yours,
H. Harvey Cummings
H. HARVEY CUMMINGS

(more)

PS: THIS AGREEMENT WAS NEGOTIATED BY MR. STEVE NAGLER. HE NOTIFIED ME VIA TELEPHONE OF THE RESULTS AND AS MENTIONED BEFORE THIS LETTER IS BEING WRITTEN TO COMPLY WITH REQUEST MADE OF ME BY MRS. COLEMAN PER TELEPHONE CONVERSATION ON OCTOBER 21. ATTORNEY CARL RACHLIN WAS IN ON THIS AT THE INITIAL STAGE.

HNC

COPIES SENT TO:

MESSRS. CARL RACHLIN
" STEVE NAGLER
" HERBERT CALLENDER
" SOL HERBERT

December 23, 1965

Mr. Nicky Shapiro
c/o Stuyvesant Insurance Company
877 Brook Avenue
Bronx, New York

Dear Nickey:

I believe that these are the last motions which we will have to file on the World's Fair Cases. It may not look like it from the affidavits, but these motions like the others, will in all probability, be granted. Hopefully, favorable court orders will follow.

Cordially,

SMN/cs

STEPHEN M. NAGLER

SCCQ-1002—8-63 135

SUPREME COURT, QUEENS COUNTY
WED:ah CRIMINAL TERM, PART I

THE PEOPLE OF THE STATE OF NEW YORK

--against--

JEREMIAH TEHON, Principal

THE STUYVESANT INS. CO., Surety. ~~Applicant~~.

BY EDWARD THOMPSON, J.

DATED December 14, 1966

Ind. No. S.P. 983

Upon payment of TEN ($10.00) Dollars costs by the moving party to the District Attorney of Queens County, this motion is granted. Submit order.

The clerk of the Court is directed to mail a copy of the decision to the attorney for the surety.

EDWARD THOMPSON
J.S.C.

C 73— Judicial Subpoena; with Witness' Stipulation to remain subject to call. Blank Court. 9-63

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80 EXCHANGE PLACE AT BROADWAY, NEW YORK

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS: CRIMINAL TERM

PEOPLE OF THE STATE OF NEW YORK,

Plaintiff

against

STUYVESANT INSURANCE COMPANY,
Surety,
for ALBERT ADKINS, ET AL, Principals.

Defendant

Index No.

Calendar No.

JUDICIAL SUBPOENA

The People of the State of New York

TO Edward N. Herman

GREETING:

WE COMMAND YOU, *That all business and excuses being laid aside, you and each of you appear and attend before*

Hon. J. Irwin Shapiro, Justice

on the 2nd *day of* February *19*67 *at* 9:30 *o'clock, in the* fore *noon, and at any recessed or adjourned date to give testimony in this action on the part of the* Surety.

Failure to comply with this subpoena is punishable as a contempt of Court and shall make you liable to the person on whose behalf this subpoena was issued for a penalty not to exceed fifty dollars and all damages sustained by reason of your failure to comply.

WITNESS, *Honorable* J. Irwin Shapiro, 31st *one of the* Justices *of said Court, at* the courthouse *the* ~~2nd~~ *day of* January *19*67

.....

Stephen M. Nagler, Esq.
Attorney(s) for Surety

Office and Post Office Address
Room 1030
150 Nassau Street
New York, N.Y. 10038

8CCQ-1002—8-63 135

FP:ah

SUPREME COURT, QUEENS COUNTY
CRIMINAL TERM, PART I

3706

THE PEOPLE OF THE STATE OF NEW YORK

--against--

RAPHAEL A. DELGADO, Principal,

THE STUYVESANT INSURANCE CO., Surety.

BY ALBERT H. BOSCH, J.

DATED June 24, 1965

Index No. S.P.No. 664

Upon payment of TEN ($10.00) Dollars costs to the District Attorney of Queens County by the moving party, this motion is granted. Submit order.

The clerk of the Court is directed to mail a copy of the decision to the attorney for the surety.

ALBERT H. BOSCH
J.S.C.

C 73— Judicial Subpoena; with Witness' Stipulation to remain subject to call. Blank Court. 9-63

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80 EXCHANGE PLACE AT BROADWAY, NEW YORK

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS: CRIMINAL TERM

PEOPLE OF THE STATE OF NEW YORK,

Plaintiff

against

STUYVESANT INSURANCE COMPANY,
Surety,
for ALBERT ADKINS ET AL, Principals, *Defendant*

Index No.
Calendar No.
JUDICIAL SUBPOENA

The People of the State of New York

TO

HARVEY B. EHRLICH, ESQ.

GREETING:

WE COMMAND YOU, *That all business and excuses being laid aside, you and each of you appear and attend before* Hon. J. Irwin Shapiro, Justice of the Supreme Court of the State of New York

on the 2nd *day of* February *19* 67 *at* 9:30 *o'clock, in the* fore *noon, and at any recessed or adjourned date to give testimony in this action on the part of the* Surety.

Failure to comply with this subpoena is punishable as a contempt of Court and shall make you liable to the person on whose behalf this subpoena was issued for a penalty not to exceed fifty dollars and all damages sustained by reason of your failure to comply.

WITNESS, *Honorable* J. Irwin Shapiro, *one of the* Justices *of said Court, at* the Courthouse *the* 31st *day of* January *19* 67

Stephen M. Nagler, Esq.

Attorney(s) for Surety

Office and Post Office Address
150 Nassau Street
New York, N.Y. 10038

SCCQ-1002—8-63 135

3720

12811

SUPREME COURT, QUEENS COUNTY
CRIMINAL TERM, PART I

WKD:ah

THE PEOPLE OF THE STATE OF NEW YORK

--against--

LOUCILLE PLUMMER, (Plummes) Principal,

THE STUYVESANT INSURANCE CO., Surety

BY ALBERT H. BOSCH, J.

DATED June 7, 1965

S.P.No. 621

Upon payment of TEN ($10.00) Dollars costs by the moving party to the District Attorney of Queens County, this motion is granted. Submit order.

The clerk of the Court is directed to mail a copy of the decision to the attorney for the surety.

ALBERT H. BOSCH
J.S.C.

SCCQ-1002—8-63 135

3721

12812

SUPREME COURT, QUEENS COUNTY
CRIMINAL TERM, PART I

WKD:ah

THE PEOPLE OF THE STATE OF NEW YORK

--against--

LOUCILE PLUMMER, (Plummes) Principal

THE STUYVESANT INSURANCE CO., Surety

BY ALBERT H. BOSCH, J.

DATED June 7, 1965

S.P.No. 623

Upon payment of TEN ($10.00) Dollars costs by the moving party to the District Attorney of Queens County, this motion is granted. Submit order.

The clerk of the Court is directed to mail a copy of the decision to the attorney for the surety.

ALBERT H. BOSCH
J.S.C.

SCCQ-1002—8-63 — 138

3769

12845

WED:ah

SUPREME COURT, QUEENS COUNTY
CRIMINAL TERM, PART I

THE PEOPLE OF THE STATE OF NEW YORK

--against--

GILBERT BANKS,

Principal

THE STUYVESANT INSURANCE CO.,

Surety ~~Defendant~~

BY ALBERT H. BOSCH, J.

DATED June 7, 1965

~~Ind. No.~~ S.P.No. 625

Upon payment of TEN ($10.00) Dollars costs by the moving party to the District Attorney of Queens County, this motion is granted. Submit order.

The clerk of the Court is directed to mail a copy of the decision to the attorney for the surety.

ALBERT H. BOSCH
J.S.C.

SCCQ-1002—8-63 — 138

3770

1.V 847

SUPREME COURT, QUEENS COUNTY
CRIMINAL TERM, PART I

THE PEOPLE OF THE STATE OF NEW YORK

--against--

GILBERT BANKS,

Principal,

THE STUYVESANT INSURANCE COMPANY,

Surety.

BY ALBERT H. BOSCH, J.

DATED June 24, 1965

~~Ind No~~ S.P.No. 655

Upon payment of TEN ($10.00) Dollars costs to the District Attorney of Queens County by the moving party, this motion is granted. Submit order.

The clerk of the Court is directed to mail a copy of the decision to the attorney for the surety.

ALBERT H. BOSCH
J.S.C.

CONGRESS OF
CORE
RACIAL EQUALITY

working to create a society in which all men are equal

200 WEST 135th STREET
NEW YORK, N.Y. 10030
281-9650

Floyd B. McKissick
national director
Lincoln O. Lynch
associate director

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Bishop W. J. Walls
Goodwin Watson
Joseph Willen
Jerry Wurf
Charles S. Zimmerman

January 9, 1967

Mr. Steven Nagler
Scholarship, Education and Defense Fund
150 Nassau Street
New York, New York 10038

Dear Steve:

Your letters regarding Mr. McConnell's bail bond and the bail forfeiture by Steve Kosloff have been turned over to Mr. McKissick. I am sure you will hear from him.

In future please direct all matters of this nature to Mr. McKissick, as I will be working in a different area here and follow up on such correspondence maybe delayed if sent to my attention.

Sincerely,

Clora Coleman

JOHN E. SILVERBERG
ATTORNEY AT LAW
15 PARK ROW
NEW YORK 38, N. Y.
—
BEEKMAN 3-7990

January 18, 1967

Mr. Thomas J. Mackell
District Attorney - Queens County
126-05 Hoover Avenue
Queens, New York

Honorable Sir:

In December, 1965, Frank J. O'Connor, District Attorney of Queens County, decided to dismiss the criminal charges against persons arrested while demonstrating on the opening day of the World's Fair; these cases are known as the "World's Fair Cases."

Unfortunately, some of the defendants were not present in court at the time of the dismissal and in consequence thereof, bail forfeitures were made.

Numerous assurances were received from Mr. Hentel's office that the charges against those persons who had not been present at the time of the dismissal, would also be dismissed in order that the bail forfeitures might be remitted. The Assistant District Attorney then in charge of the criminal courts was Mr. Morty Greenspan who has full knowledge of these matters. The defendants involved are Walter Hardy, Frank Roberson, Bill Brown, Albert Atkins, Henry Doktor, Laurras Hobbs a/k/a Hooks, Raphael DelGado and Andy Young.

So sure was Mr. Greenspan that the remaining charges would be dismissed that when Raphael DelGado came to New York from Little Rock, Arkansas prepared to surrender himself to the Warrant Officer, Mr. Greenspan sent him back to Little Rock, saying that the charges could and would be dismissed in his absence.

continued.....

JOHN E. SILVERBERG
ATTORNEY AT LAW
15 PARK ROW
NEW YORK 38, N. Y.
—
BEEKMAN 3-7990

Stephen Nagler of CORE and myself have responsibility for these cases.

We are presently attempting to remit the bail forfeitures in Supreme Court but this cannot be done unless the cases below are dismissed.

Please phone Mr. Nagler at 964-8210 concerning this matter or communicate with me directly as quickly as possible.

Thanking you in advance for your courtesy and cooperation herein, I am,

Very truly yours,

John E. Silverberg
S.

JOHN E. SILVERBERG

JES:BB

cc: Nicholas J. Caputo
Assistant District Attorney
Queens County

bcc: Stephen Nagler, Esq.
Scholarship, Education and
Defense Fund for Racial Equality
150 Nassau Street
New York, N.Y.

January 18, 1967

Mr. Floyd McKissick
Congress of Racial Equality
38 Park Row
New York, New York 10038

Re: B-128933 - Stephen Kosloff
- - - - - - - - - - - - - - -

Dear Mr. McKissick:

We are in receipt of January 17th letter from Stephen M. Nagler and note that a copy thereof was sent to you.

Inasmuch as forfeiture and judgment has been entered on this bond in the amount of $500 and defendant cannot be found, we trust that funds for payment of this forfeiture will be forthcoming shortly. There is a 6% interest charge in New York County and the longer the delay in payment, the greater the rate of interest.

It would appear that defendant cannot be found at this time, and we would like to clear this forfeiture up as promptly as possible. Should he be brought back to court and a final disposition made of the case, then a motion can be made for reimbursement.

Your kind cooperation in this matter will be appreciated, and we trust that a check to the order of National Surety Corporation in the amount of $500 will be forthcoming by return mail.

Yours very truly,

Daniel Giordano

zm

cc: Stephen M. Nagler, Esq.
150 Nassau Street
New York, N.Y. 10038

As to All 12 Motions (Adkins, Doktor, Robeson, Brown, Hardy & Hobbs - 2 each).

All were arrested at civil rights demonstration at the Wollds Fair in April, 1964.

The District Attorney (Frank O'Connor) decided to dismiss the cases of all of the above defendants. The cases were placed on the calender of the Criminal Court thereafter for the purpose of dismissal, along with their co-defendants. In fact the charges against the co-defendants were dismissed. The charges against these ~~co~~-defendants were not dismissed because they failed to appear. This is not a legal reason for failing to dismiss since in every case the defendants were represented by counsel who was present at the time bail was forfeited, and the cases were on solely for the purpose of dismissal of those charges which resulted in forfeiture.

As to Adkins ~~Doktor~~ Doktor, Robeson, Hobbs & Brown ~~The case was on the calendar~~

The forfeiture occured ~~on the~~ after the cases were remanded from the U.S. District Court (E.D. N.Y.) on a stipulation. The stipulation was based on an understanding that the charges against all of the defendants, ~~were to be dismissed~~ including all defendants named above would be dismissed.

Adkins was on the same complaint as Lane

Perdue, & Marshall Brown, ~~to th of whom~~ The three were placed on the calender of a 3 judge court, Hon T. Vincent Quinn, Presiding. Perdue & Brown were present & were dismissed. Adkins was not & his bail was forfeited. The same situation occured with Henry Doktor. In his case two co-defendants on the same complaint appeared & were dismissed, while Doktor, who was not present had his bail forfeited and a warrant issued. In the cases of both Adkins & Doktor counsel was present to represent them & their co-defendants. I represented Adkins. ~~C~~ Eugene Brooks represented Doktor.

Hobbs, Robinson & Brown were ~~p~~ placed on the Criminal Court Calender late in the year with many other defendants including Maudy (Maudy had been remanded by order of the U.S. Supreme Court, but like the others, a decision was made to dismiss the charges and his case was placed on the Criminal Court ~~cal~~ calender solely for that purpose). ~~I~~ ~~in all~~ ~~cases, the defendants were present.~~

A special part was set up to handle all of these remands (including the 4 concerned here), with Hon. George Balbach, presiding. The court ~~to~~ dismissed the cases of those who appeared but refused ~~to dismiss~~ dismiss when the defendant was absent. ~~for such~~ All were represented by counsel when the forfeitures occured, and, as said previously, there was no legal

reason for refusing to dismiss at that time.

As to all, since the cases ~~were separated~~ had been removed to the ~~S~~ U.S. District Court, the Criminal Court lost jurisdiction over them, ~~&~~ & they were removed from the calender. When they were remanded, on information & belief, no notice ~~i~~ requiring them to appear on a given date was sent out. None of the defendants whose ~~bail~~ bail was forfeited had knowledge either that their cases had been remanded & that they were required to appear on a given date. Their co-defendants who did appear learned of the requirement from John Silverberg & I, their attorneys. The failure of the defendants to appear resulted from a lack of knowledge on their part of ~~any~~ requirement that they appear. Had the forfeitures occurred on "adjourned dates", ~~they would~~ & that the defendants had would have had previous knowledge of the requirement that they appear, this would of course, not be the case.

~~Scott~~ ~~wrote~~.

After Hon. Nat Hentel, replaced Hon. Frank O'Connor as District Attorney, these arguments were presented to him & was taken under advisement. Norton Cramer, Asst. District Attorney in charge of the Criminal Courts Bureau was prepared to dismiss the cases, when the District Attorney made the decision.

So convinced was Mr Breenpan, that the remaining cases including the matters in question herein would be dismissed, that when one of the defendants ~~whose bail stood bee~~ against whom a warrant was outstanding, returned to New York from Arkansas where he attends school, and in my company attempted to surrender to the Criminal Court, Mr Breenpan sent him away & advised me to wait ~~for a few~~ until all of the cases could be withdrawn from the warrant file & dismissed.

Check date of removal on

Robeson.

SEDFRE STATE of New York vs Stuyvesant Insurance Co. Nov. 1966 - Feb. 1967 Box 41 Folder 8

(Follow-up on World's Fair Casco - Folder I)

Historical Society of Wisconsin

Please Retain Original Order

At a Criminal Term of the Supreme Court held in and for the County of Queens at the Courthouse at 135-01 Queens Boulevard, County of Queens of the City of New York, State of New York, on the 14th day of June, 1965.

PRESENT: Hon. J. Irwin Shapiro
Justice, Supreme Court

People of the State of New York, -against- Stuyvesant Insurance Company, Surety -for- DANIEL POLLOCK ..... Principal	5365-64

Stuyvesant Insurance Company, the surety above named having moved this Court for an order vacating the Judgement of the undertaking executed by Daniel Pollock, as principal and said Stuyvesant Insurance Company, as surety entered in the Office of the Clerk of Queens County on the 17th day of June, 1964, and said motion having duly come on to be heard.

Now on reading and filing the notice of motion herein dated the 28th day of April, 1965, together with proof of due service thereof, the affidavit of Stephen M. Nadler duly sworn to the 28th day of April, 1965, and on the consent of the District Attorney of the County of Queens stating that the People of the State of New York have lost no rights and after hearing Stephen M. Nadler, attorney for the above named surety in favor of said motion and Frank O'Connor, District Attorney of Queens County by EDWARD N. HERMAN, Assistany District Attorney, appearing but not opposing, and due deliberation having been had thereon, it is, on motion of Stephen M. Nadler, attorney for the surety,

ORDERED that the said motion be and the same hereby is granted, and it is further

ORDERED that the forfeiture of the undertaking of bail heretofore executed by Daniel Pollock as principal and Stuyvesant Insurance Company as surety, which said forfeiture was entered on the 7th day of May , 1964, be and the same hereby is in all respects vacated and set aside, and it is further

ORDERED that the judgment entered upon said undertaking so forfeited in the office of the Clerk of the County of Queens on June 17 , 1964, be and the same hereby is vacated and the Clerk of the County of Queens upon being served with a certified copy of this order is hereby directed to make a note of the vacation of said judgment on all indices and records of said judgment contained in his office referring to this order, and it is further

ORDERED that a copy of this order with notice of entry thereof be served on the District Attorney of Queens County with 10 days after entry thereof.

Enter

★GRANTED
JUN 14 1965
P.L.
CLERK

J.S.C.
Justice, Supreme Court

At a Criminal Term of the Supreme Court held in and for the County of Queens at the Courthouse at 135-01 Queens Boulevard, County of Queens of the City of New York, State of New York, on the 14th day of June, 1965.

PRESENT: Hon. J. Irwin Shapiro
Justice, Supreme Court

People of the State of New York, -against- Stuyvesant Insurance Company, Surety -for- Paul Davis Principal	12814-64

Stuyvesant Insurance Company, the surety above named having moved this Court for an order vacating the ~~judgement~~ forfeiture of the undertaking executed by Paul Davis, as principal and said Stuyvesant Insurance Company, as surety entered in the Office of the Clerk of Queens County on the 25th day of November, 1964, and said motion having duly come on to be heard.

Now on reading and filing the notice of motion herein dated the 3rd day of May, 1965, together with proof of due service thereof, the affidavit of Stephen M. Nadler duly sworn to the 3rd day of May, 1965, and on the consent of the District Attorney of the County of Queens stating that the People of the State of New York have lost no rights and after hearing Stephen M. Nadler, attorney for the above named surety in favor of said motion and Frank O'Connor, District Attorney of Queens County by Lawrence McGrath, Assistany District Attorney, appearing but not opposing, and due deliberation having been had thereon, it is, on motion of Stephen M. Nadler, attorney for the surety,

ORDERED that the said motion be and the same hereby is granted, and it is further

ORDERED that the forfeiture of the undertaking of bail heretofore executed by Paul Davis as principal and Stuyvesant Insurance Company as surety, which said forfeiture was entered on ~~the~~ 18th day of June, 1964, be and the same hereby is in all respects vacated and set aside, and it is further

ORDERED that the judgment entered upon said undertaking so forfeited in the office of the Clerk of the County of Queens on November 25, 1964, be and the same hereby is vacated and the Clerk of the County of Queens upon being served with a certified copy of this order is hereby directed to make a note of the vacation of said judgment on all indices and records of said judgment contained in his office referring to this order, and it is further

ORDERED that a copy of this order with notice of entry thereof be served on the District Attorney of Queens County with 10 days after entry thereof.

Enter

★GRANTED
JUN 14 1965
CLERK

9/5
Justice, Supreme Court

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS CRIMINAL TERM

. . . . . .

PEOPLE OF THE STATE OF NEW YORK,
Plaintiff,

-against-

THE STUYVESANT INSURANCE COMPANY

County Clerk
Index # 12808-64
Docket #:B2228-64

-for-

RAPHAEL A. DELGADO,
Principal.

. . . . . .

SIR:

PLEASE TAKE NOTICE that upon the annexed affidavit of STEPHEN M. NAGLER, ESQ., duly sworn to the 18th day of June, 1965, THAT the undersigned will move this Court at Criminal Term, Part 1, of this Court, at the Courthouse, in the Supreme Court Building, 125-01 Queens Blvd., Kew Gardens, Queens, New York, on the 23rd day of June, 1965, at ten o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for an order rescinding the forefeiture of bail and vacating and setting aside a judgment in the amount of $1000, resulting from bail forfeiture entered in office of the Clerk of Queens County on the 25th day of November, 19 64, against THE STUYVESANT INSURANCE COMPANY, as Surety for Raphael A. Delgado, Principal, and for such other and further relief as to the Court may seem just and proper.

Dated, Queens County, New York.

June 18, 19 65.

Yours, Etc.

STEPHEN M. NAGLER
Attorney for Surety
Office and Post Office Address
875 Brook Avenue
Bronx 51, New York

TO: Frank D. O'Connor, Esq.
District Attorney, Queens County
126-05 Hoover Avenue
Kew Gardens, Queens
New York

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF QUEENS: CRIMINAL TERM

.....X

THE PEOPLE OF THE STATE OF NEW YORK,
Plaintiff,

-against-

THE STUYVESANT INSURANCE COMPANY,
Surety,

Docket #:2228-64
County Clerk
Index #: 12808-64

-- for --

RAPHAEL A. DELGADO,
Principal.

.....X

STATE OF NEW YORK ss;
COUNTY OF QUEENS

STEPHEN M. NAGLER, being duly sworn deposes and says, THAT I am the agent for The Stuyvesant Insurance Company, the surety herein, and as such agent am fully familiar with the facts herein.

THAT heretofore, and on the 22nd day of April 19 64, The Stuyvesant Insurance Company entered into a recognizance in the sum of ~~FIVE HUNDRED (500)~~ One Thousand DOLLARS, wherein Raphael A. Delgado was the principal, and The Stuyvesant Insurance Company was the surety, in favor of The People of The State of New York, for the appearance of said principal to answer a charge of violation of §§1851, & 1532 of the Penal Law.

THAT thereafter, on the 18th day of May 19 64, the case was called in The Criminal Court, held in and for the county of Queens, and the said principal not appearing the said recognizance was forfeited.

THAT the principal's failure to appear at the court appointed time was neither wilfull nor deliberate and the people have not lost any rights as a result of the non-appearance.

THAT bail was reinstated by the Hon. Bernard Dubin, Judge of the Criminal Court of the City of New York on May 25, 1964.

THAT notwithstanding the reinstatement of bail on May 25, 1964, a judgment of bail forfeiture was entered in the Office of the Clerk of Queens County on November 25, 1964.

THAT it is readily apparent that the principal's absence at the appointed time has been adequately explained and by virtue of the special circumstances existing herein, a granting of the relief sought is fully warranted.

THAT no previous application for the relief prayed for herein has been made.

Wherefore, deponent respectfully prays that an order be entered in the above entitled action releasing The Stuyvesant Insurance Company from all its obligations under the bail bond in connection with the charges of §1532 & 1851, against the said principal and that this court remit the forfeiture of the undertaking filed by the said company, and vacating and setting aside and discharging the judgment in the sum of One-Thousand (1,000) DOLLARS, in the office of the Clerk of Queens County, entered on the 25th day of November, 1964, in favor of The People of the State of New York, against The Stuyvesant Insurance Company, as surety and Raphael A. Delgado as principal,

upon receipt by him of the or der of the court, and for such other and further relief as to the court may seem just and proper in the premises.

Stephen M. Nagler

Sworn to before me

this 15 day of June 1965

Barry Lee Cohen

BARRY LEE COHEN
Notary Public, State of New York
No. 31-5735505
Qualified in New York County
Commission expires March 30, 1966

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS CRIMINAL TERM

. . . . . .

PEOPLE OF THE STATE OF NEW YORK
Plaintiff,

-against-

THE STUYVESANT INSURANCE COMPANY

County Clerk
Index #12845

-for-

GILBERT BANKS

Principal.

. . . . . .

SIR:

PLEASE TAKE NOTICE that upon the annexed affidavit of STEPHEN M. NAGLER, ESQ., duly sworn to the 3rd day of May, 1965, THAT the undersigned will move this Court at Criminal Term, Part 1, of this Court, at the Courthouse, in the Supreme Court Building, 125-01 Queens Blvd., Kew Gardens, Queens, New York, on the 24th day of May, 1965, at ten o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for an order rescinding the forefeiture of bail and vacating and setting aside a judgment in the amount of $500, resulting from bail forfeiture entered in office of the Clerk of Queens County on the 25th day of November, 1964, against THE STUYVESANT INSURANCE COMPANY, as Surety for GILBERT BANKS, Principal, and for such other and further relief as to the Court may seem just and proper.

Dated, Queens County, New York.

May 3rd, 1965.

Yours, Etc.

STEPHEN M. NAGLER
Attorney for Surety
Office and Post Office Address
875 Brook Avenue
Bronx 51, New York

TO: Frank D. O'Connor, Esq.
District Attorney, Queens County
126-05 Hoover Avenue
Kew Gardens, Queens
New York

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF QUEENS: CRIMINAL TERM

.....X

THE PEOPLE OF THE STATE OF NEW YORK
Plaintiff,

-against-

THE STUYVESANT INSURANCE COMPANY
Surety,

-- for --

GILBERT BANKS
Principal.

.....X

STATE OF NEW YORK ss;
COUNTY OF QUEENS

STEPHEN M. NAGLER, being duly sworn deposes and says, THAT I am the agent for The Stuyvesant Insurance Company, the surety herein, and as such agent am fully familiar with the facts herein.

THAT heretofore, and on the 22nd day of April, 1964, The Stuyvesant Insurance Company entered into a recognizance in the sum of FIVE HUNDRED (500) DOLLARS, wherein GILBERT BANKS was the principal, and The Stuyvesant Insurance Company was the surety, in favor of The People of The State of New York, for the appearance of said principal to answer a charge of violation of § 722

THAT thereafter, on the 22nd day of June 19 , the case was called in The Criminal Court, held in and for the county of Queens, and the said principal not appearing the said recognizance was forfeited.

THAT the principal's failure to appear at the court appointed time was neither wilfull nor deliberate and the people have not lost any rights as a result of the non-appearance.

THAT the case of PEOPLE v. GILBERT BANKS had been removed to the United States District Court for the Eastern District of New York on the 17th of June, 1964 which is 5 days prior to the date on which bail was revoked for the non-appearance of GILBERT BANKS on the 22nd of June, 1964.

THAT certiorari having been denied by the United States Supreme Court on April 26th, 1965 in this case (included in PEOPLE v. GALLAMISON), the case will be returned to the calender of the Criminal Court of Queens County.

THAT it is readily apparent that the principal's absence at the appointed time has been adequately explained and by virtue of the special circumstances existing herein, a granting of the relief sought is fully warranted.

THAT not more than one year has elapsed since the forfeiture was declared.

THAT no previous application for the relief prayed for herein has been made.

Wherefore, deponent respectfully prays that an order be entered in the above entitled action releasing The Stuyvesant Insurance Company from all its obligations under the bail bond in connection with the charge of § 722 , against the said principal and that this court remit the forfeiture of the undertaking filed by the said company, and vacating and setting aside and discharging the judgment in the sum of FIVE HUNDRED ($500.00) DOLLARS, in the office of the Clerk of Queens County, entered on the 25th day of November, 1964 , in favor of The People of The State of New York, against The Stuyvesant Insurance Company, as surety and GILBERT BANKS as principal,

upon receipt by him of the or der of the court, and for such other and further relief as to the court may seem just and proper in the premises.

_____

Sworn to before me

this day of 19

_____

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS CRIMINAL TERM

. . . . . .

PEOPLE OF THE STATE OF NEW YORK,
Plaintiff,

-against-

THE STUYVESANT INSURANCE COMPANY,

County Clerk
Index #12,847-64

-for-

GILBERT BANKS,
Principal.

. . . . . .

SIR:

PLEASE TAKE NOTICE that upon the annexed affidavit of STEPHEN M. NAGLER, ESQ., duly sworn to the 11th day of June, 1965, THAT the undersigned will move this Court at Criminal Term, Part 1, of this Court, at the Courthouse, in the Supreme Court Building, 125-01 Queens Blvd., Kew Gardens, Queens, New York, on the 16th day of June 1965, at ten o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for an order rescinding the forefeiture of bail and vacating and setting aside a judgment in the amount of $500, resulting from bail forfeiture entered in office of the Clerk of Queens County on the 25th day of November, 1964, against THE STUYVESANT INSURANCE COMPANY, as Surety for GILBERT BANKS, Principal, and for such other and further relief as to the Court may seem just and proper.

Dated, Queens County, New York.

June 11th 1965

Yours, Etc.

STEPHEN M. NAGLER
Attorney for Surety
Office and Post Office Address
875 Brook Avenue
Bronx 51, New York

TO: Frank D. O'Connor, Esq.
District Attorney, Queens County
126-05 Hoover Avenue
Kew Gardens, Queens
New York

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF QUEENS: CRIMINAL TERM

.....X

THE PEOPLE OF THE STATE OF NEW YORK,
Plaintiff,

-against-

THE STUYVESANT INSURANCE COMPANY
Surety,

-- for --

GILBERT BANKS,
Principal.

.....X

STATE OF NEW YORK ss;
COUNTY OF QUEENS

STEPHEN M. NAGLER, being duly sworn deposes and says, THAT I am the agent for The Stuyvesant Insurance Company, the surety herein, and as such agent am fully familiar with the facts herein.

THAT heretofore, and on the 22nd day of April 1964, The Stuyvesant Insurance Company entered into a recognizance in the sum of FIVE HUNDRED (500) DOLLARS, wherein GILBERT BANKS was the principal, and The Stuyvesant Insurance Company was the surety, in favor of The People of The State of New York, for the appearance of said principal to answer a charge of violation of §1851 of The Penal Law.

THAT thereafter, on the 22nd day of June 1964, the case was called in The Criminal Court, held in and for the county of Queens, and the said principal not appearing the said recognizance was forfeited.

THAT the principal's failure to appear at the court appointed time was neither wilfull nor deliberate and the people have not lost any rights as a result of the non-appearance.

THAT on June 24, 1964, the Hon. J. Wolfe Chassen, Judge of the Criminal Court of the City of New York rescinded the forfeiture, and reinstated the bail.

THAT it is readily apparent that the principal's absence at the appointed time has been adequately explained and by virtue of the special circumstances existing herein, a granting of the relief sought is fully warranted.

THAT not more than one year has elapsed since the forfeiture was declared.

THAT no previous application for the relief prayed for herein has been made.

Wherefore, deponent respectfully prays that an order be entered in the above entitled action releasing The Stuyvesant Insurance Company from all its obligations under the bail bond in connection with the charge of $1851, against the said principal and that this court remit the forfeiture of the undertaking filed by the said company, and vacating and setting aside and discharging the judgment in the sum of FIVE-HUNDRED (500) DOLLARS, in the office of the Clerk of Queens County, entered on the 25th day of November 1964, in favor of The People of The State of New York, against The Stuyvesant Insurance Company, as surety and as principal,

upon receipt by him of the or der of the court, and for such other and further relief as to the court may seem just and proper in the premises.

Stephen M. Nagler

Sworn to before me
this 11 day of June 1961

LEAH SCHIFFMAN
NOTARY PUBLIC, State of New York
No. 41-8809668
Qualified in Queens County

#3721

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS : CRIMINAL TERM

- x

THE PEOPLE OF THE STATE OF NEW YORK :

-against- :

THE STUYVESANT INSURANCE COMPANY, :

Surety, :

LUCILLE PLUMMER (Plumnes). :

Principal. :

- x

STATE OF NEW YORK)
: ss.:
COUNTY OF QUEENS)

LAWRENCE J. McGRATH, being duly sworn, deposes and says that he is an Assistant District Attorney in the office of the District Attorney of Queens County.

The defendant herein was arrested and arraigned on April 22nd, 1964, in the Criminal Court of Queens County charged with having violated Section 1851 of the Penal Law, held in $500.00 bail and the matter adjourned to May 25, 1964.

She was thereafter released on bail when the surety herein posted a bond for her appearance to answer the charge.

On May 25, 1964 because of the defendant's failure to appear the bond was forfeited by Judge Manuel Gomez who ordered that a warrant issue for her arrest.

The defendant and surety herein have submitted in support of this motion a transcript of record of the Criminal Court, Queens, Part 3, dated June 3, 1965 which discloses that

the charge against the defendant herein was dismissed in that court on June 1st, 1965 on motion of the District Attorney.

Under the circumstances the District Attorney offers no opposition to the granting of this motion but respectfully asks that costs be imposed.

Sworn to before me this
4th day of June, 1965.

Maxwell Nelson

MAXWELL K. NELSON, Notary Public
New York State No. 41-8117565
Queens County
Commission Expires March 30, 1966

Lawrence J. McGrath

At a Criminal Term of the Supreme Court held in and for the County of Queens at the Courthouse at 135-01 Queens Boulevard, County of Queens of the City of New York, State of New York, on the 27th day of August, 1965.

PRESENT: Hon. Albert H. Roach .....
Justice, Supreme Court

People of the State of New York, -against- Stuyvesant Insurance Company, Surety -for- ....Loucille Plummer, (Plummes).... Principal	/ County Clerk Index # 12,811-64 S.P. No. 621

Stuyvesant Insurance Company, the surety above named having moved this Court for an order vacating the forfeiture of the undertaking executed by Loucille Plummer, (Plummes), as principal and said Stuyvesant Insurance Company, as surety entered in the Office of the Clerk of Queens County on the 25th day of November, 1964, and said motion having duly come on to be heard.

Now on reading and filing the notice of motion herein dated the 3rd day of May, 1965, together with proof of due service thereof, the affidavit of Stephen M. Nadler duly sworn to the 3rd day of May, 1965, and on the consent of the District Attorney of the County of Queens stating that the People of the State of New York have lost no rights and after hearing Stephen M. Nadler, attorney for the above named surety in favor of said motion and Frank O'Connor, District Attorney of Queens County by Lawrence McGrath, Assistant District Attorney, appearing but not opposing, and due deliberation having been had thereon, it is, on motion of Stephen M. Nadler, attorney for the surety,

ORDERED that the said motion be and the same hereby is granted, and it is further

ORDERED that the forfeiture of the undertaking of bail heretofore executed by Loucille Plummer, (Plumme) as principal and Stuyvesant Insurance Company as surety, which said forfeiture was entered on the 25th day of May , 1964, be and the same hereby is in all respects vacated and set aside, and it is further

ORDERED that the judgment in the sum of $500.00 entered upon said undertaking so forfeited in the office of the Clerk of the County of Queens on November 25th , 1964, be and the same hereby is vacated and the Clerk of the County of Queens upon being served with a certified copy of this order is hereby directed to make a note of the vacation of said judgment on all indices and records of said judgment contained in his office referring to this order, and it is further

ORDERED that a copy of this order with notice of entry thereof be served on the District Attorney of Queens County with 10 days after entry thereof.

Enter

AHB
J.S.C.

☆GRANTED
AUG 27 1965
CLERK

AHB
Justice, Supreme Court

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS : CRIMINAL TERM

- x

THE PEOPLE OF THE STATE OF NEW YORK :

-against- :

THE STUYVESANT INSURANCE COMPANY, :

Surety, :

GILBERT BANKS, :

Principal. :

- x

STATE OF NEW YORK)
: ss.:
COUNTY OF QUEENS)

LAWRENCE J. McGRATH, being duly sworn, deposes and says that he is an Assistant District Attorney in the office of the District Attorney of Queens County.

This is a motion by the defendant and surety herein for an order vacating an order of forfeiture entered in the Criminal Court on June 22nd, 1964 because of the defendant's failure to appear pursuant to a bail bond executed for his appearance, and to set aside a judgment entered thereon by the District Attorney in the office of the Clerk of the County of Queens.

An examination of the records of the Criminal Court made by your deponent discloses that the forfeiture that this motion is brought to vacate has already been vacated, the record indicating that on June 24, 1964 the Hon. J. Wolfe Chassen rescinded the forfeiture, vacated the warrant and reinstated the bail.

Under the circumstances the District Attorney offers no opposition to the granting of this motion.

Sworn to before me this
13th day of May, 1965.

Aurora M. Di Palma

Lawrence J. McGrath

AURORA M. DI PALMA
Notary Public, State of New York
No. 41-6042200 — Queens County
Term Expires March 30, 1966

At a Criminal Term of the Supreme Court held in and for the County of Queens at the Courthouse at 125-01 Queens Boulevard, County of Queens of the City of New York, State of New York, on the day of , 1965.

PRESENT: Hon. J. IRWIN SHAPIRO.....
Justice, Supreme Court

People of the State of New York,	
-against-	County Clerk Index #12809-'64
Stuyvesant Insurance Company, Surety	
-for-	
..MARSHALL BROWN..... Principal	

Stuyvesant Insurance Company, the surety above named having moved this Court for an order vacating the forfeiture of the undertaking executed by Marshall Brown , as principal and said Stuyvesant Insurance Company, as surety entered in the Office of the Clerk of Queens County on the 25th day of November , 1964, and said motion having duly come on to be heard.

Now on reading and filing the notice of motion herein dated the 3rd day of May, 1965, together with proof of due service thereof, the affidavit of Stephen M. Nagler duly sworn to the 3rd day of May , 1965, and on the consent of the District Attorney of the County of Queens stating that the People of the State of New York have lost no rights and after hearing Stephen M. Nadler, attorney for the above named surety in favor of said motion and Frank O'Connor, District Attorney of Queens County by Lawrence McGrath, Assistant District Attorney, appearing but not opposing, and due deliberation having been had thereon, it is, on motion of Stephen M. Nagler, attorney for the surety,

ORDERED that the said motion be and the same hereby is granted, and it is further

ORDERED that the forfeiture of the undertaking of bail heretofore executed by Marshall Brown as principal and Stuyvesant Insurance Company as surety, which said forfeiture was entered on the 25th day of November , 1964, be and the same hereby is in all respects vacated and set aside, and it is further

ORDERED that the judgment entered upon said undertaking so forfeited in the office of the Clerk of the County of Queens on November 25 , 1964, be and the same hereby is vacated and the Clerk of the County of Queens upon being served with a certified copy of this order is hereby directed to make a note of the vacation of said judgment on all indices and records of said judgment contained in his office referring to this order, and it is further

ORDERED that a copy of this order with notice of entry thereof be served on the District Attorney of Queens County with 10 days after entry thereof.

Enter

_____

Justice, Supreme Court

At a Criminal Term of the Supreme Court held in and for the County of Queens at the Courthouse at 135-01 Queens Boulevard, County of Queens of the City of New York, State of New York, on the day of , 1965.

PRESENT: Hon. J. IRWIN SHAPIRO ....
Justice, Supreme Court

People of the State of New York, -against- Stuyvesant Insurance Company, Surety -for- MELVIN OWENS ..... Principal	Index No. 5359-'64

Stuyvesant Insurance Company, the surety above named having moved this Court for an order vacating the forfeiture of the undertaking executed by Melvin Owens , as principal and said Stuyvesant Insurance Company, as surety entered in the Office of the Clerk of Queens County on the 18th day of June , 1964, and said motion having duly come on to be heard.

Now on reading and filing the notice of motion herein dated the 28th day of April, 1965, together with proof of due service thereof, the affidavit of Stephen M. Nagler duly sworn to the 28th day of April , 1965, and on the consent of the District Attorney of the County of Queens stating that the People of the State of New York have lost no rights and after hearing Stephen M. Nagler, attorney for the above named surety in favor of said motion and Frank O'Connor, District Attorney of Queens County by Lawrence McGrath, Assistant District Attorney, appearing but not opposing, and due deliberation having been had thereon, it is, on motion of Stephen M. Nagler, attorney for the surety,

ORDERED that the said motion be and the same hereby is granted, and it is further

ORDERED that the forfeiture of the undertaking of bail heretofore executed by Melvin Owens as principal and Stuyvesant Insurance Company as surety, which said forfeiture was entered on the 18th day of June , 1964, be and the same hereby is in all respects vacated and set aside, and it is further

ORDERED that the judgment entered upon said undertaking so forfeited in the office of the Clerk of the County of Queens on June 18th , 1964, be and the same hereby is vacated and the Clerk of the County of Queens upon being served with a certified copy of this order is hereby directed to make a note of the vacation of said judgment on all indices and records of said judgment contained in his office referring to this order, and it is further

ORDERED that a copy of this order with notice of entry thereof be served on the District Attorney of Queens County with 10 days after entry thereof.

Enter

_____

Justice, Supreme Court

#3719

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS : CRIMINAL TERM

- x

THE PEOPLE OF THE STATE OF NEW YORK :

-against- :

THE STUYVESANT INSURANCE COMPANY, :

Surety, :

MARSHALL, BROWN, :

Principal. :

- x

STATE OF NEW YORK)
: ss.:
COUNTY OF QUEENS)

LAWRENCE J. McGRATH, being duly sworn, deposes and says that he is an Assistant District Attorney in the office of the District Attorney of Queens County.

An examination of the records of the Criminal Court of Queens made by your deponent discloses that the bail bond posted by the surety herein for the defendant's appearance to answer a charge of having violated Section 1851 of the Penal Law was forfeited on May 25, 1964 because of the defendant's failure to appear, but that two days thereafter, on May 27th, the bail was reinstated by Hon. Manuel A. Gomez.

The Bail Bond Bureau of the District Attorney's office had no knowledge of this bail having been reinstated and in the regular course of business entered a judgment in the Office of the Clerk of the County of Queens against the defendant and surety herein.

The forfeiture herein having already been vacated and the judgment having been entered in error, the

District Attorney under the circumstances offers no opposition to the granting of this motion.

Sworn to before me this
4th day of May, 1965.

Aurora M. Di Palma

Lawrence J. McGra

AURORA M. DI PALMA
Notary Public, State of New York
No. 41-6042200 — Queens County
Term Expires March 30, 1966

#3718

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS : CRIMINAL TERM

- x

THE PEOPLE OF THE STATE OF NEW YORK :

-against- :

THE STUYVESANT INSURANCE COMPANY, :

Surety, :

MARSHALL BROWN, :

Principal. :

- x

STATE OF NEW YORK)
: ss.:
COUNTY OF QUEENS)

LAWRENCE J. McGRATH, being duly sworn, deposes and says that he is an Assistant District Attorney in the office of the District Attorney of Queens County.

This is a motion by the defendant and surety herein for an order rescinding the forfeiture entered in the Criminal Court of Queens on the 25th day of May 1964 by Hon. Manuel A. Gomez when the defendant herein failed to appear pursuant to the terms of a bail bond executed herein for his appearance to answer charge of having violated Section 2036 of the Penal Law.

It would appear from an examination of the records of the Criminal Court that on May 27, 1964, two days after the bail had been forfeited, it was reinstated by Judge Gomez.

The Bail Bond Bureau of the District Attorney's office having no knowledge of the action taken by Judge Gomez

entered judgment in the Office of the Clerk of the County of Queens against the defendant and surety herein in the regular course of business.

Under the circumstances the District Attorney offers no opposition to the granting of this motion.

Sworn to before me this
4th day of May, 1965.

Aurora M. Di Palma

Lawrence J. McGrath

AURORA M. DI PALMA
Notary Public, State of New York
No. 41-6042200 — Queens County
Term Expires March 30, 1966

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF QUEENS: CRIMINAL TERM

.....X

THE PEOPLE OF THE STATE OF NEW YORK

Plaintiff,

-against-

THE STUYVESANT INSURANCE COMPANY

Surety,

--for--

DANIEL POLLOCK,

Principal.

.....X

STATE OF NEW YORK
COUNTY OF QUEENS ss.

AFFIDAVIT

George Schiffer being duly sworn deposes and says:

1. I was one of the attorneys for persons arrested at the Schaeffer Pavilion of the New York World's Fair on April 22, 1964 in the course of a Civil Rights demonstration. One of these persons was Daniel Pollock. I am fully familiar with the facts involving the forfeiture of bail in the case of PEOPLE v. DANIEL POLLOCK .

2. Nearly 300 persons were arrested in connection with the World's Fair demonstration of April, 1964. On April 22/23 attorneys for defendants, clerks, district attorneys and judges remained in court until after 3 A.M. to complete arraignments and bail procedures. Bail releases

for some persons could not be completed until two days later.

3. 90 persons, including Daniel Pollock, were arrested at the Schaeffer Pavilion alone. The arrests took place at about 1 P.M. Defendants however, were not brought into court until about 11 P.M. because the World's Fair Police refused to sign complaints against them. Finally at about 11 P.M. a Mr. Cook, Director of Public Relations for the Schaeffer Company, consented to sign a complaint. Meanwhile, because no complaint had been signed the defendants were denied access to counsel. Considerable confusion necessarily resulted.

4. On the evening of April 22, 1964 dates were fixed by the court for future appearances in these cases in April, May and June. It took several weeks to compile accurate lists of names, charges, docket numbers and addresses. As a result of confusion in the records of defendants' attorneys, court clerks, and the District Attorney, few people, including the defendants, were actually certain of the next date on which they would be required to appear. Although attorneys for defendants, court clerks and Assistant District Attorneys worked together very closely to eliminate errors it took several weeks until much of the confusion was removed. Despite

all these circumstances Judge Larry Vetrano insisted that each defendant appear on each and every scheduled date although it was known in advance that adjournments would be requested since neither side was prepared to go to trial.

5. It was known in advance that adjournments would be requested in the cases of the persons arrested at the Schaeffer Pavilion, including Daniel Pollock, when these cases were called on May 7, 1964. Adjournments were requested because the attorneys for defendants and the District Attorney were considering what disposition should be made of these cases. Because of Judge Vetrano's insistence on appearances by defendants in such situations however, defaults were inevitable.

6. In every case which came up or when a defendant came in after a default a motion was made to reinstate bail. These motions were not opposed by the PEOPLE and were uniformly granted by the judges of the Criminal Court.

During a short period of time, Judge Vetrano's Bulletin No.15 to the judges of the Criminal Court was in force. Bulletin No.15 purported to change the normal procedure in bail defaults and to require the defendants to appear on dates on which it was known that an adjournment would be requested with the consent of all parties. Judge Vetrano's

order was rescinded early in July, 1964. This order added to the confusion.

7. By mid-June a determination had been reached to dismiss all charges as to some defendants and some charges as to others. Other defendants elected to plead guilty. Still other defendants elected to stand trial. During the week beginning on Monday, June 15, 1964 in excess of 150 cases were disposed of. The complaint was withdrawn and charges dismissed on motion of the PEOPLE against all except seven defendants arrested at the Schaeffer Pavilion. The cases arising at the Schaeffer Pavilion were disposed of in a single day.

8. On that day numerous other cases were also disposed of. These dispositions occurred in Part IB and in Part III of the Criminal Court of Queens County. In light of the volume of labor some clerical inaccuracies were inevitable. Although assistant district attorneys, clerks, and attorneys for defendants co-operated to avoid errors, certain discrepancies arose. There was no intent on the part of any judge of the Criminal Court to forfeit bail in any of the Schaeffer Pavilion cases which came up on June 17. On the other hand, remission of bail in the Pollock case, for example could easily have been overlooked by a clerk entering dispositions in a mass of cases many of which involved several charges against each defendant.

9. Under all of the circumstances, deponent believes that bail forfeiture in the case of PEOPLE v. POLLOCK was in fact remitted in open court.

10. In any event, since the case involved charges which the complainant was most reluctant to make in the first place and which were subsequently withdrawn and since the requirement

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS: CRIMINAL TERM

.....X

THE PEOPLE OF THE STATE OF NEW YORK
Plaintiff,

-against-

THE STUYVESANT INSURANCE COMPANY
Surety,

County Clerk
Index #5365

--for--

Docket #

DANIEL POLLOCK
Principal

.....X

STATE OF NEW YORK)
COUNTY OF QUEENS) ss.

AFFIDAVIT

EDWARD N. HERMAN being duly sworn deposes and says:

THAT I am an Assistant District Attorney for the County of Queens, City of New York.

THAT I was one of the Assistant District Attorneys concerned with the prosecution of defendants arrested at the Shaefer Pavilion of the New York World's Fair in April of 1964, and as such I am fully familiar with the facts in these cases. Daniel Pollock was one of those arrested at the Shaefer Pavilion at that time.

THAT nearly 90 persons including Daniel Pollock were arrested at the Shaefer Pavilion.

THAT due to the large number of persons arrested at the New York World's Fair on April 22, 1964 considerable time was spent in preparation and arraignment for trial and

adjournments were had in the various Parts in connection therewith. It is my recollection that prior to May 7, 1964, I had agreed with defense counsel that a joint application would be made for an adjournment of the Shaefer Pavilion situation subject, of course, to the approval of the court.

THAT prior to June 17, 1964 the complaints against all but seven of the persons arrested at the Shaefer Pavilion of the New York World's Fair were withdrawn and/or dismissed with the consent of the District Attorney. Since this defendant was not one of the seven, the charges against him would have been dismissed had he been present at that time. In fact on June 17, 1964 a motion to dismiss was actually made and granted.

THAT at no time had the District Attorney taken any position adverse to the re-instatement of bail as to this defendant.

EDWARD N. HERMAN
Assistant District Attorney,
County of Queens
Office and P. O. Address
125-01 Queens Boulevard
Kew Gardens, Queens, New York

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS : CRIMINAL TERM

- x

THE PEOPLE OF THE STATE OF NEW YORK :

Plaintiff, :

-against- :

THE STUYVESANT INSURANCE COMPANY, :

Surety, :

MELVIN OWENS, :

Principal. :

- x

STATE OF NEW YORK)
: ss.:
COUNTY OF QUEENS)

LAWRENCE J. McGRATH, being duly sworn, deposes and says that he is an Assistant District Attorney in the office of the District Attorney of Queens County.

Your deponent has made an examination of the records of the Criminal Court, Queens County and has found that the forfeiture declared on May 5, 1964 was on May 8th, 1964 vacated by Hon. Albert S. McGrover.

The Bail Bond Bureau of the District Attorney's office of Queens had no knowledge of the forfeiture having been vacated the day after it was ordered and in the regular course of business entered a judgment against the defendant and surety herein.

Under the circumstances the District Attorney offers no opposition to the granting of this motion.

Sworn to before me this
30th day of April, 1965.

Lawrence J. McGrath

Aurora M. Di Palma

AURORA M. Di PALMA
Notary Public, State of New York
No. 41-6042200 — Queens County
Term Expires March 30, 1966

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS CRIMINAL TERM

. . . . . .

PEOPLE OF THE STATE OF NEW YORK
Plaintiff,

-against-

THE STUYVESANT INSURANCE COMPANY

County Clerk
Index # 12814

-for-

PAUL DAVIS
Principal.

. . . . . .

SIR:

PLEASE TAKE NOTICE that upon the annexed affidavit of STEPHEN M. NAGLER, ESQ., duly sworn to the 3rd day of May, 1965, THAT the undersigned will move this Court at Criminal Term, Part 1, of this Court, at the Courthouse, in the Supreme Court Building, 125-01 Queens Blvd., Kew Gardens, Queens, New York, on the 17th day of May, 1965, at ten o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for an order rescinding the forefeiture of bail and vacating and setting aside a judgment in the amount of $500, resulting from bail forfeiture entered in office of the Clerk of Queens County on the 25th day of November, 1964, against THE STUYVESANT INSURANCE COMPANY, as Surety for PAUL DAVIS, Principal, and for such other and further relief as to the Court may seem just and proper.

Dated, Queens County, New York.

May 3rd, 1965.

Yours, Etc.

STEPHEN M. NAGLER
Attorney for Surety
Office and Post Office Address
875 Brook Avenue
Bronx 51, New York

TO: Frank D. O'Connor, Esq.
District Attorney, Queens County
126-05 Hoover Avenue
Kew Gardens, Queens
New York

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF QUEENS: CRIMINAL TERM

.....X

THE PEOPLE OF THE STATE OF NEW YORK
Plaintiff,

-against-

THE STUYVESANT INSURANCE COMPANY
Surety,

-- for --

PAUL DAVIS Principal.

.....X

STATE OF NEW YORK ss;
COUNTY OF QUEENS

STEPHEN M. NAGLER, being duly sworn deposes and says, THAT I am the agent for The Stuyvesant Insurance Company, the surety herein, and as such agent am fully familiar with the facts herein.

THAT heretofore, and on the 22nd day of April 19 64 The Stuyvesant Insurance Company entered into a recognizance in the sum of FIVE HUNDRED (500) DOLLARS, wherein

PAUL DAVIS was the principal, and The Stuyvesant Insurance Company was the surety, in favor of The People of The State of New York, for the appearance of said principal to answer a charge of violation of § 1851

THAT thereafter, on the 18th day of June 19 64 the case was called in The Criminal Court, held in and for the county of Queens, and the said principal not appearing the said recognizance was forfeited.

THAT the principal's failure to appear at the court appointed time was neither wilfull nor deliberate and the people have not lost any rights as a result of the non-appearance.

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF QUEENS: CRIMINAL TERM

.....X

THE PEOPLE OF THE STATE OF NEW YORK
Plaintiff,

-against-

THE STUYVESANT INSURANCE COMPANY
Surety,

-- for --

PAUL DAVIS Principal.

.....X

STATE OF NEW YORK ss;
COUNTY OF QUEENS

STEPHEN M. NAGLER, being duly sworn deposes and says, THAT I am the agent for The Stuyvesant Insurance Company, the surety herein, and as such agent am fully familiar with the facts herein.

THAT heretofore, and on the 22nd day of April 19 64 The Stuyvesant Insurance Company entered into a recognizance in the sum of FIVE HUNDRED (500) DOLLARS, wherein PAUL DAVIS was the principal, and The Stuyvesant Insurance Company was the surety, in favor of The People of The State of New York, for the appearance of said principal to answer a charge of violation of § 1851

THAT thereafter, on the 18th day of June 19 64 the case was called in The Criminal Court, held in and for the county of Queens, and the said principal not appearing the said recognizance was forfeited.

THAT the principal's failure to appear at the court appointed time was neither wilfull nor deliberate and the people have not lost any rights as a result of the non-appearance.

THAT PAUL DAVIS was, on June 18th, 1964 in the Otisville State Training School and is now in the New Hampton State Training School.

THAT the present proceedings against PAUL DAVIS were removed to the United States District Court for the Eastern District of New York where they are still pending.

THAT it is readily apparent that the principal's absence at the appointed time has been adequately explained and by virtue of the special circumstances existing herein, a granting of the relief sought is fully warranted.

THAT not more than one year has elapsed since the forfeiture was declared.

THAT no previous application for the relief prayed for herein has been made.

Wherefore, deponent respectfully prays that an order be entered in the above entitled action releasing The Stuyvesant Insurance Company from all its obligations under the bail bond in connection with the charge of # 1851 , against the said principal and that this court remit the forfeiture of the undertaking filed by the said company, and vacating and setting aside and discharging the judgment in the sum of **FIVE HUNDRED ($500.00)** DOLLARS, in the office of the Clerk of **Queens** County, entered on the **25th** day of **November,** 1964 , in favor of The People of The State of New York, against The Stuyvesant Insurance Company, as surety and **PAUL DAVIS** as principal,

upon receipt by him of the or der of the court, and for such other and further relief as to the court may seem just and proper in the premises.

_____

Sworn to before me

this day of 19

_____

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS CRIMINAL TERM

. . . . . .

PEOPLE OF THE STATE OF NEW YORK
Plaintiff,

-against-

THE STUYVESANT INSURANCE COMPANY

County Clerk
Index # 12820

-for-

PRISCILLA (PATRICIA) STEVENS
Principal.

. . . . . .

WITHDRAWN

SIR:

PLEASE TAKE NOTICE that upon the annexed affidavit of STEPHEN M. NAGLER, ESQ., duly sworn to the 3rd day of May, 1965, THAT the undersigned will move this Court at Criminal Term, Part 1, of this Court, at the Courthouse, in the Supreme Court Building, 125-01 Queens Blvd., Kew Gardens, Queens, New York, on the 17th day of May, 1965, at ten o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for an order rescinding the forefeiture of bail and vacating and setting aside a judgment in the amount of $500, resulting from bail forfeiture entered in office of the Clerk of Queens County on the 25th day of November, 19 64, against THE STUYVESANT INSURANCE COMPANY, as Surety for PRISCILLA (PATRICIA) STEVENS, Principal, and for such other and further relief as to the Court may seem just and proper.

Dated, Queens County, New York.

May 3rd, 19 65.

Yours, Etc.

STEPHEN M. NAGLER
Attorney for Surety
Office and Post Office Address
875 Brook Avenue
Bronx 51, New York

TO: Frank D. O'Connor, Esq.
District Attorney, Queens County
126-05 Hoover Avenue
Kew Gardens, Queens
New York

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF QUEENS: CRIMINAL TERM

.....X

THE PEOPLE OF THE STATE OF NEW YORK
Plaintiff,

-against-

THE STUYVESANT INSURANCE COMPANY
Surety,

-- for --

PRISCILLA (PATRICIA) STEVENS
Principal.

.....X

STATE OF NEW YORK ss;
COUNTY OF QUEENS

STEPHEN M. NAGLER, being duly sworn deposes and says, THAT I am the agent for The Stuyvesant Insurance Company, the surety herein, and as such agent am fully familiar with the facts herein.

THAT heretofore, and on the 22nd day of April 1964, The Stuyvesant Insurance Company entered into a recognizance in the sum of FIVE HUNDRED (500) DOLLARS, wherein PRISCILLA (PATRICIA) STEVENS was the principal, and The Stuyvesant Insurance Company was the surety, in favor of The People of The State of New York, for the appearance of said principal to answer a charge of violation of § 2036

THAT thereafter, on the 9th day of July 1964, the case was called in The Criminal Court, held in and for the county of Queens, and the said principal not appearing the said recognizance was forfeited.

THAT the principal's failure to appear at the court appointed time was neither wilfull nor deliberate and the people have not lost any rights as a result of the non-appearance.

THAT PRISCILLA (PATRICIA) STEVENS was on the 9th of August, 1964, in the Republic of Ghana, Africa, and was not duly informed that she was required to appear at the Criminal Court of the County of Queens.

THAT the proceedings against PRISCILLA (PATRICIA) STEVENS have been removed to the United States District Court for the Eastern District of New York where they are now pending.

THAT it is readily apparent that the principal's absence at the appointed time has been adequately explained and by virtue of the special circumstances existing herein, a granting of the relief sought is fully warranted.

THAT not more than one year has elapsed since the forfeiture was declared.

THAT no previous application for the relief prayed for herein has been made.

Wherefore, deponent respectfully prays that an order be entered in the above entitled action releasing The Stuyvesant Insurance Company from all its obligations under the bail bond in connection with the charge of B 2036, against the said principal and that this court remit the forfeiture of the undertaking filed by the said company, and vacating and setting aside and discharging the judgment in the sum of FIVE HUNDRED ($500.00) DOLLARS, in the office of the Clerk of Queens County, entered on the 25th day of November 19 64, in favor of The People of The State of New York, against The Stuyvesant Insurance Company, as surety and PRISCILLA (PATRICIA) STEVENS as principal,

upon receipt by him of the or der of the court, and for such other and further relief as to the court may seem just and proper in the premises.

_____

Sworn to before me

this day of 19

_____

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS CRIMINAL TERM

. . . . . .

PEOPLE OF THE STATE OF NEW YORK
Plaintiff,

-against-

THE STUYVESANT INSURANCE COMPANY

County Clerk
Index # 12809

-for-

MARSHALL BROWN

Principal.

. . . . . .

SIR:

PLEASE TAKE NOTICE that upon the annexed affidavit of STEPHEN M. NAGLER, ESQ., duly sworn to the 3rd day of May, 1965, THAT the undersigned will move this Court at Criminal Term, Part 1, of this Court, at the Courthouse, in the Supreme Court Building, 125-01 Queens Blvd., Kew Gardens, Queens, New York, on the 10th day of May, 1965, at ten o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for an order rescinding the forefeiture of bail and vacating and setting aside a judgment in the amount of $500, resulting from bail forfeiture entered in office of the Clerk of Queens County on the 25th day of November, 1964, against THE STUYVESANT INSURANCE COMPANY, as Surety for MARSHALL BROWN, Principal, and for such other and further relief as to the Court may seem just and proper.

Dated, Queens County, New York.

May 3rd, 1965.

Yours, Etc.

STEPHEN M. NAGLER
Attorney for Surety
Office and Post Office Address
875 Brook Avenue
Bronx 51, New York

TO: Frank D. O'Connor, Esq.
District Attorney, Queens County
126-05 Hoover Avenue
Kew Gardens, Queens
New York

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS CRIMINAL TERM

. . . . . .

PEOPLE OF THE STATE OF NEW YORK
Plaintiff,

-against-

THE STUYVESANT INSURANCE COMPANY

County Clerk
Index # 12809

-for-

MARSHALL BROWN
Principal.

. . . . . .

SIR:

PLEASE TAKE NOTICE that upon the annexed affidavit of STEPHEN M. NAGLER, ESQ., duly sworn to the 3rd day of May, 1965, THAT the undersigned will move this Court at Criminal Term, Part 1, of this Court, at the Courthouse, in the Supreme Court Building, 125-01 Queens Blvd., Kew Gardens, Queens, New York, on the 10th day of May, 1965, at ten o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for an order rescinding the forefeiture of bail and vacating and setting aside a judgment in the amount of $500, resulting from bail forfeiture entered in office of the Clerk of Queens County on the 25th day of November, 1964, against THE STUYVESANT INSURANCE COMPANY, as Surety for MARSHALL BROWN, Principal, and for such other and further relief as to the Court may seem just and proper.

Dated, Queens County, New York.

May 3rd, 1965.

Yours, Etc.

STEPHEN M. NAGLER
Attorney for Surety
Office and Post Office Address
875 Brook Avenue
Bronx 51, New York

TO: Frank D. O'Connor, Esq.
District Attorney, Queens County
126-05 Hoover Avenue
Kew Gardens, Queens
New York

THAT MARSHALL BROWN was not in fact notified that he was required to appear on the 25th of May, 1964.

THAT on hearing of the revocation of bail resulting from his non-appearance he presented himself in the Criminal Court of Queens County on the 26th of May, 1964, and bail was thereafter reinstated.

THAT shortly thereafter the proceedings against MARSHALL BROWN were removed to the United States District Court from which they were remanded on the 17th of March, 1965 on stipulation of all parties concerned.

THAT the proceedings against MARSHALL BROWN have been set down for trial on the 11th of May, 1965 in the Criminal Court of Queens County.

THAT it is readily apparent that the principal's absence at the appointed time has been adequately explained and by virtue of the special circumstances existing herein, a granting of the relief sought is fully warranted.

THAT not more than one year has elapsed since the forfeiture was declared.

THAT no previous application for the relief prayed for herein has been made.

Wherefore, deponent respectfully prays that an order be entered in the above entitled action releasing The Stuyvesant Insurance Company from all its obligations under the bail bond in connection with the charge of $ 2036 , against the said principal and that this court remit the forfeiture of the undertaking filed by the said company, and vacating and setting aside and discharging the judgment in the sum of FIVE HUNDRED ($500.00) DOLLARS, in the office of the Clerk of Queens County, entered on the 25th day of November 1964, in favor of The People of The State of New York, against The Stuyvesant Insurance Company, as surety and MARSHALL BROWN as principal,

upon receipt by him of the or der of the court, and for such other and further relief as to the court may seem just and proper in the premises.

_____

Sworn to before me

this day of 19

_____

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS CRIMINAL TERM

. . . . . .

PEOPLE OF THE STATE OF NEW YORK
Plaintiff,

-against-

THE STUYVESANT INSURANCE COMPANY

County Clerk
Index # 12810

-for-

MARSHALL BROWN
Principal.

. . . . . .

SIR:

PLEASE TAKE NOTICE that upon the annexed affidavit of STEPHEN M. NAGLER, ESQ., duly sworn to the 3rd day of May, 1965, THAT the undersigned will move this Court at Criminal Term, Part 1, of this Court, at the Courthouse, in the Supreme Court Building, 125-01 Queens Blvd., Kew Gardens, Queens, New York, on the 10th day of May, 1965, at ten o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for an order rescinding the forefeiture of bail and vacating and setting aside a judgment in the amount of $500, resulting from bail forfeiture entered in office of the Clerk of Queens County on the 25th day of November 1964, against THE STUYVESANT INSURANCE COMPANY, as Surety for MARSHALL BROWN, Principal, and for such other and further relief as to the Court may seem just and proper.

Dated, Queens County, New York.

May 3rd, 1965.

Yours, Etc.

STEPHEN M. NAGLER
Attorney for Surety
Office and Post Office Address
875 Brook Avenue
Bronx 51, New York

TO: Frank D. O'Connor, Esq.
District Attorney, Queens County
126-05 Hoover Avenue
Kew Gardens, Queens
New York

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF QUEENS: CRIMINAL TERM

.....X

THE PEOPLE OF THE STATE OF NEW YORK
Plaintiff,

-against-

THE STUYVESANT INSURANCE COMPANY
Surety,

-- for --

MARSHALL BROWN,
Principal.

.....X

STATE OF NEW YORK ss;
COUNTY OF QUEENS

STEPHEN M. NAGLER, being duly sworn deposes and says, THAT I am the agent for The Stuyvesant Insurance Company, the surety herein, and as such agent am fully familiar with the facts herein.

THAT heretofore, and on the 24 day of April, 1964, The Stuyvesant Insurance Company entered into a recognizance in the sum of FIVE HUNDRED (500) DOLLARS, wherein MARSHALL BROWN was the principal, and The Stuyvesant Insurance Company was the surety, in favor of The People of The State of New York, for the appearance of said principal to answer a charge of violation of § 1851

THAT thereafter, on the 25th day of May 1964, the case was called in The Criminal Court, held in and for the county of Queens, and the said principal not appearing the said recognizance was forfeited.

THAT the principal's failure to appear at the court appointed time was neither wilfull nor deliberate and the people have not lost any rights as a result of the non-appearance.

THAT MARSHALL BROWN was not in fact notified that he was required to appear on the 25th of May, 1964.

THAT on hearing of the revocation of bail resulting from his non-appearance he presented himself in the Criminal Court of Queens County on the 26th of May, 1964, and bail was thereafter reinstated.

THAT shortly thereafter the proceedings against MARSHALL BROWN were removed to the United States District Court from which they were remanded on the 17th of March, 1965 on stipulation of all parties concerned.

THAT the proceedings against MARSHALL BROWN have been set down for trial on the 11th of May, 1965 in the Criminal Court of Queens County.

THAT it is readily apparent that the principal's absence at the appointed time has been adequately explained and by virtue of the special circumstances existing herein, a granting of the relief sought is fully warranted.

THAT not more than one year has elapsed since the forfeiture was declared.

THAT no previous application for the relief prayed for herein has been made.

Wherefore, deponent respectfully prays that an order be entered in the above entitled action releasing The Stuyvesant Insurance Company from all its obligations under the bail bond in connection with the charge of B 1851, against the said principal and that this court remit the forfeiture of the undertaking filed by the said company, and vacating and setting aside and discharging the judgment in the sum of FIVE HUNDRED ($500.00) DOLLARS, in the office of the Clerk of Queens County, entered on the 25th day of November 19 64, in favor of The People of The State of New York, against The Stuyvesant Insurance Company, as surety and MARSHALL BROWN as principal,

upon receipt by him of the or der of the court, and for such other and further relief as to the court may seem just and proper in the premises.

_____

Sworn to before me

this day of 19

_____

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS CRIMINAL TERM

.....

PEOPLE OF THE STATE OF NEW YORK
Plaintiff,

-against-

THE STUYVESANT INSURANCE COMPANY
Surety,

County Clerk
Index # ~~1354~~ 5365-64

-for-

DANIEL POLLOCK
Principal.

.....

SIR:

PLEASE TAKE NOTICE that upon the annexed affidavit of STEPHEN M. NAGLER, ESQ., duly sworn to the 28th day of April, 1965, THAT the undersigned will move this Court at Criminal Term, Part 1 of this Court, at the Courthouse, in the Supreme Court Building, 125-01 Queens Blvd., Kew Gardens, Queens, New York, on the 3rd day of May, 1965, at ten o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for an order, rescinding the forfeiture of bail and vacating and setting aside a judgment in the amount of $500, resulting from bail forfeiture entered in Office of the Clerk of Queens County on the 7th day of May, 1964, against THE STUYVESANT INSURANCE COMPANY, as Surety for DANIEL POLLOCK, Principal, and for such other and further relief as to the Court may seem just and proper.

Dated, Queens County, New York.

April 28th, 1965.

Yours, Etc.

STEPHEN M. NAGLER
Attorney for Surety
Office and Post Office Address
875 Brook Avenue
Bronx 51, New York

To: Frank D. O'Connor, Esq.
District Attorney, Queens County
125-5 Hoover Avenue
Kew Gardens, Queens
New York

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF QUEENS: CRIMINAL TERM

.....X

THE PEOPLE OF THE STATE OF NEW YORK
Plaintiff,

-against-

THE STUYVESANT INSURANCE COMPANY
Surety,

-- for --

DANIEL POLLOCK
Principal.

.....X

STATE OF NEW YORK ss;
COUNTY OF QUEENS

STEPHEN M. NAGLER, being duly sworn deposes and says, THAT I am the agent for The Stuyvesant Insurance Company, the surety herein, and as such agent am fully familiar with the facts herein.

THAT heretofore, and on the 23rd day of April 1964, The Stuyvesant Insurance Company entered into a recognizance in the sum of FIVE HUNDRED (500) DOLLARS, wherein DANIEL POLLOCK was the principal, and The Stuyvesant Insurance Company was the surety, in favor of The People of The State of New York, for the appearance of said principal to answer a charge of violation of § 1851.

THAT thereafter, on the 7th day of May 1964, the case was called in The Criminal Court, held in and for the county of Queens, and the said principal not appearing the said recognizance was forfeited.

THAT the principal's failure to appear at the court appointed time was neither wilfull nor deliberate and the people have not lost any rights as a result of the non-appearance.

THAT DANIEL POLLOCK was, on May 7th, 1964 at his home at 5208A Cabonne, St. Louis, Missouri and was not duly notified that he was required to appear on that day.

THAT the charge against DANIEL POLLOCK was dismissed on June 17, 1964 as appears from the certificate of disposition of the case, annexed hereto, and made a part hereof,

THAT it is readily apparent that the principal's absence at the appointed time has been adequately explained and by virtue of the special circumstances existing herein, a granting of the relief sought is fully warranted.

THAT not more than one year has elapsed since the forfeiture was declared.

THAT no previous application for the relief prayed for herein has been made.

Wherefore, deponent respectfully prays that an order be entered in the above entitled action releasing The Stuyvesant Insurance Company from all its obligations under the bail bond in connection with the charge of B 1851, against the said principal and that this court remit the forfeiture of the undertaking filed by the said company, and vacating and setting aside and discharging the judgment in the sum of FIVE HUNDRED ($500.00) DOLLARS, in the office of the Clerk of Queens County, entered on the 7th day of May 1965, in favor of The People of The State of New York, against The Stuyvesant Insurance Company, as surety and DANIEL POLLOCK as principal,

upon receipt by him of the or der of the court, and for such other and further relief as to the court may seem just and proper in the premises.

Sworn to before me

this day of 19

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS CRIMINAL TERM

.....

PEOPLE OF THE STATE OF NEW YORK
Plaintiff,

-against-

THE STUYVESANT INSURANCE COMPANY
Surety,

-for-

MELVIN OWENS,
Principal.

.....

County Clerk
Index # 12,810

SIR:

PLEASE TAKE NOTICE that upon the annexed affidavit of STEPHEN M. NAGLER, ESQ., duly sworn to the 28th day of April 1965, THAT the undersigned will move this Court at Criminal Term, Part 1 of this Court, at the Courthouse, in the Supreme Court Building, 125-01 Queens Blvd., Kew Gardens, Queens, New York, on the 3rd day of May, 1965, at ten o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for an order, vacating and setting aside a judgment in the amount of $500, resulting from bail forfeiture entered in Office of the Clerk of Queens County on the 5th day of May, 1964 against THE STUYVESANT INSURANCE COMPANY, as Surety for MELVIN OWENS, Principal, and for such other and further relief as to the Court may seem just and proper.

vacating the forfeiture of bail and

Dated, Queens County, New York.

April 28th, 1965.

Yours, Etc.

STEPHEN M. NAGLER
Attorney for Surety
Office and Post Office Address
875 Brook Avenue
Bronx 51, New York

To: Frank D. O'Connor, Esq.
District Attorney, Queens County
125-01 Queens Avenue
Kew Gardens, Queens
New York

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF QUEENS: CRIMINAL TERM

.....X

THE PEOPLE OF THE STATE OF NEW YORK

Plaintiff,

-against-

THE STUYVESANT INSURANCE COMPANY

Surety,

-- for --

MELVIN OWENS

Principal.

.....X

STATE OF NEW YORK
COUNTY OF QUEENS ss;

STEPHEN M. NAGLER, being duly sworn deposes and says, THAT I am the agent for The Stuyvesant Insurance Company, the surety herein, and as such agent am fully familiar with the facts herein.

THAT heretofore, and on the 22nd day of April 1965, The Stuyvesant Insurance Company entered into a recognizance in the sum of FIVE HUNDRED (500) DOLLARS, wherein MELVIN OWENS was the principal, and The Stuyvesant Insurance Company was the surety, in favor of The People of The State of New York, for the appearance of said principal to answer a charge of violation of § 722

THAT thereafter, on the 5th day of May 1964, the case was called in The Criminal Court, held in and for the county of Queens, and the said principal not appearing the said recognizance was forfeited.

THAT the principal's failure to appear at the court appointed time was neither wilfull nor deliberate and the people have not lost any rights as a result of the non-appearance.

THAT the case was removed to the U.S. District Court for the Eastern District of New York, and appeal was taken from a judgment of that Court to the United States Court of Appeals, and subsequently to the United States Supreme Court from which a determination was had on April 26th, 1965. During the period of the appeals an order staying proceedings in the Criminal Court of Queens had been granted.

THAT the case will be tried on the merits in the Criminal Court, County of Queens, on a date to be set.

THAT it is readily apparent that the principal's absence at the appointed time has been adequately explained and by virtue of the special circumstances existing herein, a granting of the relief sought is fully warranted.

THAT not more than one year has elapsed since the forfeiture was declared.

THAT no previous application for the relief prayed for herein has been made.

Wherefore, deponent respectfully prays that an order be entered in the above entitled action releasing The Stuyvesant Insurance Company from all its obligations under the bail bond in connection with the charge of B 722 , against the said principal and that this court remit the forfeiture of the undertaking filed by the said company, and vacating and setting aside and discharging the judgment in the sum of FIVE HUNDRED ($500.00) DOLLARS, in the office of the Clerk of Queens County, entered on the 5th day of May 1964, in favor of The People of The State of New York, against The Stuyvesant Insurance Company, as surety and MELVIN OWENS as principal,

upon receipt by him of the or der of the court, and for such other and further relief as to the court may seem just and proper in the premises.

SWM.

Sworn to before me

this day of 19

_____

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ~~KINGS~~ Queens CRIMINAL TERM

.....

PEOPLE OF THE STATE OF NEW YORK
Plaintiff,

-against-

THE STUYVESANT INSURANCE COMPANY
Surety,

-for-

Principal.

.....

County Clerk
Index #

S I R :

PLEASE TAKE NOTICE that upon the annexed affidavit of ~~MICHELE SHAPIRO~~ STEPHEN M. NAGLER, ESQ., duly sworn to the day of , 19 65, ~~and the certificate of the Clerk of the CRIMINAL COURT , County of Kings dated , 19 ,~~

THAT the undersigned will move this Court at Criminal Term, Part 1 of this Court, at the Courthouse, in the Supreme Court Building, ~~Civic Center, Montague Street, Brooklyn,~~ 125-01 QUEENS BLVD., KEW GARDENS, QUEENS New York, on the day of MAY , 19 65, at ten o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for an order vacating and setting aside a judgment in the amount of $500 , resulting from bail forfeiture entered in Office of the Clerk of ~~Kings~~ Queens County on the day of , 19 , against THE STUYVESANT INSURANCE COMPANY, as Surety for , Principal, and for such other and further relief as to the Court may seem just and proper.

Dated, ~~Kings~~ Queens County, New York

19 .

Yours, Etc.

Leave 2 LINES BLANK

~~AARON SLAVITSKY~~
STEPHEN M. NAGLER
Attorney for Surety
Office and Post Office Address
875 Brook Avenue
Bronx 51, New York

TO: D. FRANK O'CONNOR, Esq.
DISTRICT ATTORNEY, QUEENS COUNTY
~~D A~~
125-01 QUEENS BOULEVARD
KEW GARDENS, QUEENS
NEW YORK.

~~Box No. [illegible]~~

ST 868

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF Queens / Criminal Term

---X

THE PEOPLE OF THE STATE OF NEW YORK
Plaintiff,

— against —

THE STUYVESANT INSURANCE COMPANY
Surety,

— for —

Principal.

---X

STATE OF NEW YORK ss;
COUNTY OF QUEENS

STEPHEN M. NAGLER, being duly sworn deposes and says,

THAT I am the agent for The Stuyvesant Insurance Company, the surety herein, and as such agent AM fully familiar with the facts herein.

THAT heretofore, and on the day of 19 , The Stuyvesant Insurance Company, entered into a recognizance in the sum of ~~$500~~ FIVE-HUNDRED (500) DOLLARS, wherein was the principal, and The Stuyvesant Insurance Company was the surety, in favor of The People of The State of New York, for the appearance of said principal to answer a charge of violation of ~~[illegible]~~ =

THAT thereafter, on the day of 19 , the case was called in The CRIMINAL Court, held in and for the county of QUEENS , and the said principal not appearing the said recognizance was forfeited.

~~As will hereinafter be demonstrated~~, THAT the principal's failure to appear at the court appointed time was neither wilfull nor deliberate and the people have not lost any rights as a result of the non-appearance.

As more fully appears from the annexed affidavit of , sworn to the day of 19

4 11 space

Honor Queens

it is readily apparent that the principal's absence at the appointed time has been adequately explained and by virtue of the special circumstances existing herein, a granting of the relief sought is fully warranted.

A certificate of disposition of the case is annexed hereto and made a part hereof.

THAT not more than one year has elapsed since the forfeiture was declared.

THAT no previous application for the relief prayed for herein has been made.

Wherefore, deponent respectfully prays that an order be entered in the above entitled action releasing The Stuyvesant Insurance Company from all its obligations under the bail bond in connection with the charge of

against the said principal and that this court remit the forfeiture of the undertaking filed by the said company, and vacating and setting aside and discharging the judgment in the sum of DOLLARS,

in the office of the Clerk of County, entered on the day of 19 , in favor of The People of The State of New York, against The Stuyvesant Insurance Company, as surety and as principal, upon receipt by him of the order of the court, and for such other and further relief as to the court may seem just and proper in the premises.

.....

Sworn to before me

this day of 19

.....

At a Criminal Term of the Supreme Court held in and for the County of ~~Queens~~ KINGS at the Courthouse at ~~135-01 THE~~ ~~Queens Boulevard~~, County of ~~Queens~~ of the City of New York, State of New York, on the 17th day of ~~August~~, 1966.

BROOKLYN CIVIC CENTER, KINGS

HYMAN BARSHAY

PRESENT: Hon. ~~Albert H. Bosch~~
Justice, Supreme Court

People of the State of New York,	**County Clerk**
-against-	**Index # ~~12818-64~~**
Stuyvesant Insurance Company, Surety,	**~~S.P. No. 627~~**
-for- FRANCIS DEAVEAUX (A/K/A/ FRANCIS DEAVEAREZ), ~~Priscilla (Patricia) Stevens~~ Principal.	

Stuyvesant Insurance Company, the surety above named having moved this Court for an order vacating the forfeiture of the undertaking executed by ~~Priscilla~~ (Patricia) ~~Stevens~~, as principal and said Stuyvesant Insurance Company, as surety entered in the Office of the Clerk of ~~Queens~~ KINGS County on the ~~25th~~ 29TH day of ~~November~~ MARCH, 1965, and said motion having duly come on to be heard.

Now on reading and filing the notice of motion herein dated the ~~3rd~~ day of ~~May~~ MARCH, 1966, together with proof of due service thereof, the affidavit of Stephen M. Nagler duly sworn to the ~~3rd~~ day of MARCH, 1966, and on the consent of the District Attorney of the County of ~~Queens~~ KINGS stating that the People of the State of New York have lost no rights and after hearing Stephen M. Nagler, attorney for the above named surety in favor of said motion and ~~Frank O'Connor~~ AARON KOOTA, District Attorney of ~~Queens~~ KINGS County ~~by Lawrence McGrath, Assistant District Attorney~~, appearing but not opposing, and due deliberation having been had thereon, it is, on motion of Stephen M. Nagler, attorney for the surety,

ORDERED that the said motion be and the same hereby is granted, and it is further

ORDERED that the forfeiture of the undertaking of bail heretofore executed by ~~Priscilla Stevens~~ (Patricia) as principal and Stuyvesant Insurance Company as surety, which said forfeiture was entered on ~~the 9th~~ 16th day of ~~July~~ MARCH, 1965, be and the same hereby is in all respects vacated and set aside, and it is further

ORDERED that the judgment in the sum of $500.00 entered upon said undertaking so forfeited in the office of the Clerk of the County of ~~Queens~~ KINGS on ~~November 25th~~ MARCH 29TH, 1965, be and the same hereby is vacated and the Clerk of the County of ~~Queens~~ KINGS upon being served with a certified copy of this order is hereby directed to make a note of the vacation of said judgment on all indices and records of said judgment contained in his office referring to this order, and it is further

ORDERED that a copy of this order with notice of entry thereof be served on the District Attorney of ~~Queens~~ KINGS County with 10 days after entry thereof.

Enter,

Justice, Supreme Court

GRANTED
AUG 27 1965
CLERK

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS CRIMINAL TERM

.....

PEOPLE OF THE STATE OF NEW YORK
Plaintiff,

-against-

THE STUYVESANT INSURANCE COMPANY,
Surety,

County Clerk
Index 3900-'65

-for-

ROBERT DELAIN, Principal.

.....

SIR:

PLEASE TAKE NOTICE that upon the annexed affidavit of STEPHEN M. NAGLER, ESQ., duly sworn to the 15th day of March, 1966, THAT the undersigned will move this Court at Criminal Term, Part 1, of this Court, at the Courthouse, in the Supreme Court Building, Brooklyn Civic Center, Brooklyn, New York, on the 23rd day of March, 1966, at ten o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for an order rescinding the forefeiture of bail and vacating and setting aside a judgment in the amount of $1,000, resulting from bail forfeiture entered in office of the Clerk of Kings County on the 1st day of April, 1965, against THE STUYVESANT INSURANCE COMPANY, as Surety for ROBERT DELAIN, Principal, and for such other and further relief as to the Court may seem just and proper.

Dated, New York, New York
March 15th, 1966

Yours, Etc.

STEPHEN M. NAGLER
Attorney for Surety
Office and Post Office Address
c/o C.O.R.E., 38 Park Row - N.Y.,N.Y. 10038

TO: Hon. Aaron Koota
District Attorney Kings County
Municipal Building
Brooklyn, New York

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK CRIMINAL TERM

.....

THE PEOPLE OF THE STATE OF NEW YORK
Plaintiff,

-against-

THE STUYVESANT INSURANCE COMPANY
Surety,

-- for --

ROBERT DELAIN, Principal

.....

STATE OF NEW YORK as.:
COUNTY OF NEW YORK

STEPHEN M. NAGLER, being duly sworn deposes and says, THAT I am the agent for the Stuyvesant Insurance Company, the surety herein, and as such agent am fully familiar with the facts herein.

THAT heretofore, and on the 22nd day of February, 1965, The Stuyvesant Insurance Company entered into a recognizance in the sum of ONE-THOUSAND (1,000) DOLLARS, wherein ROBERT DELAIN was the principal, and The Stuyvesant Insurance Company was the surety, in favor of The People of the State of New York, for the appearance of said principal to answer a charge of violation of Penal Law Section 242 (Felonious assault).

THAT thereafter, on the 26th day of March, 1965, the case was called in The Criminal Court, held in and for the county of Kings, and the said principal not appearing the said recognizance was forfeited.

THAT the principal's failure to appear at the court appointed time was neither wilfull nor deliberate and the people have not lost any rights as a result of the non-appearance.

THAT, on information and belief, the reason for the said non-appearance of ROBERT DELAIN on March 26, 1965, was that he was confined to the Kings Park State Hospital as a patient.

THAT ROBERT DELAIN was unaware that he was required to appear in the Criminal Court in and for the County of Kings and in any event on information and belief was unable for the aforementioned reasons to appear on that date.

THAT subsequent to his release from the hospital, ROBERT DELAIN returned to the Criminal Court and on June 3rd, 1965, the charge against him was discussed.

THAT it is readily apparent that the principal's absence at the appointed time has been adequately explained and by virtue of the special circumstances existing herein, a granting of the relief sought is fully warranted.

THAT not more than one year has elapsed since the forfeiture was declared.

THAT no previous application for the relief prayed for herein has been made.

Wherefore, deponent respectfully prays that an order be entered in the above entitled action releasing The Stuyvesant Insurance Company from all its obligations under the bail bond in connection with the charge of Penal Law Section 242, against the said principal and that this court remit the forfeiture of the undertaking filed by the said company, and vacating and setting aside and discharging the judgment in the sum of ONE-THOUSAND (1,000) DOLLARS, in the office of the Clerk of Kings County, entered on the 1st day of April, 1965, in favor of The People of The State of New York, against the Stuyvesant Insurance Company, as surety and ROBERT DELAIN as principal, upon receipt by him of the order of the

court

court and for such other and further relief as to the court may seem just and proper in the premises.

SH

Sworn to before me
this 15 day of March 1966

RITA L. CARRINGTON
NOTARY PUBLIC, State of New York
No. 41-0581325
Qualified in Queens County
Cert. filed in New York County
Term Expires March 30, 1967

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS : CRIMINAL TERM

- x

THE PEOPLE OF THE STATE OF NEW YORK :

-against- :

THE STUYVESANT INSURANCE COMPANY, :

Surety, :

PRISCILLY (PATRICIA) STEVENS, :

Principal, :

- x

STATE OF NEW YORK)
: ss.:
COUNTY OF QUEENS)

LAWRENCE J. McGRATH, being duly sworn, deposes and says that he is an Assistant District Attorney in the office of the District Attorney of Queens County.

The defendant herein was arrested and arraigned on April 22, 1964 charged with having violated Section 1851 of the Penal Law before Hon. Bernard Dubin who adjourned the matter to May 25, 1964 and admitted the defendant to bail in the sum of $500.00.

An examination of the records of the Criminal Court made by your deponent discloses that on June 9, 1964 because of the defendant's failure to appear pursuant to the terms of her bail bond, her bail was forfeited but that thereafter on August 11th, 1964 the Hon. J. Wolfe Chassen vacated the warrant, vacated the forfeiture and reinstated her bail.

The fact that the bail had been reinstated, AND the forfeiture vacated had not been brought to the attention of the

Bail Bond Bureau of the District Attorney's office and in the regular course of business a judgment was entered in the County Clerk's office of Queens.

Underthe circumstances the District Attorney offers no opposition to the granting of this motion.

Sworn to before me this
11th day of May, 1965.

Aurora M. Di Palma

Lawrence J. McGrath

AURORA M. Di PALMA
Notary Public, State of New York
No. 41-6042200 — Queens County
Term Expires March 30, 1966

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS CRIMINAL TERM

.....

PEOPLE OF THE STATE OF NEW YORK
Plaintiff,

-against-

THE STUYVESANT INSURANCE COMPANY

County Clerk
Index #372065

-for-

FRANCIS DEAVEAREZ (a/k/a, FRANCIS DEAVEAUX)

.....

SIR:

PLEASE TAKE NOTICE that upon the annexed affidavit of STEPHEN M. NAGLER, ESQ., duly sworn to the 10th day of March , 1966, THAT the undersigned will move this Court at Criminal Term, Part 1, of this Court, at the Courthouse, in the Supreme Court Building, Brooklyn Civic Center, Brooklyn, New York, on the 16th day of March, 1966, at ten o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for an order rescinding the forefeiture of bail and vacating and setting aside a judgment in the amount of $500, resulting from bail forfeiture entered in office of the Clerk of Kings County on the 29TH day of MARCH , 1965, against THE STUYVESANT INSURANCE COMPANY, as Surety for FRANCIS DEAVEAREZ, Principal, and for such other and further relief as to the Court may seem just andpproper.

Dated, New York, New York

March 10th, 1966

Yours, Etc.

STEPHEN M. NAGLER
Attorney for Surety
Office and Post Office Address
c/o C.O.R.E., 38 PARK Row
N.Y., N.Y. 10038

TO: Hon. Aaron Koota
District Attorney Kings County
Municipal Building
Brooklyn, New York

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK CRIMINAL TERM

.....X

THE PEOPLE OF THE STATE OF NEW YORK
Plaintiff,

-against-

THE STUYVESANT INSURANCE COMPANY
Surety,

-- for --

FRANCIS DEAVEAREZ (a/k/a, FRANCIS DEVEAUX)
Principal,

.....X

STATE OF NEW YORK
COUNTY OF NEW YORK ss;

STEPHEN M. NAGLER, being duly sworn deposes and says, THAT I am the agent for The Stuyvesant Insurance Company, the surety herein, and as such agent am fully familiar with the facts herein.

THAT heretofore, and on the 19th day of February, 1965, The Stuyvesant Insurance Company entered into a recognizance in the sum of FIVE HUNDRED (500) DOLLARS, wherein FRANCIS DEAVEAREZ was the principal, and The Stuyvesant Insurance Company was the surety, in favor of The People of The State of New York, for the appearance of said principal to answer a charge of violation of Penal Law Section 722.

THAT thereafter, on the 16th day of March, 1965, the case was called in The Criminal Court, held in and for the county of Kings, and the said principal not appearing the said recognizance was forfeited.

THAT the principal's failure to appear at the court appointed time was neither wilfull nor deliberate and the people have not lost any rights as a result of the non-appearance.

THAT, on information and belief, the reason for the said non-appearance of FRANCIS DEAVEAREZ on March 16th, 1965, was that he was confined to the Kings County Jail as a result of a conviction having no relation to the present case.

THAT FRANCIS DEAVEAREZ was unaware that he was required to appear in the Criminal Court in and for the County of Kings and in any event on information and belief was unable for the aforementioned reasons to appear on that date.

THAT it is readily apparent that the principal's absence at the appointed time has been adequately explained and by virtue of the special circumstances existing herein, a granting of the relief sought is fully warranted.

THAT not more than one year has elapsed since the forfeiture was declared.

THAT no previous application for the relief prayed for herein has been made.

Wherefore, deponent respectfully prays that an order be entered in the above entitled action releasing The Stuyvesant Insurance Company from all its obligations under the bail bond in connection with the charge of Penal Law Section 722 , against the said principal and that this court remit the forfeiture of the undertaking filed by the said company, and vacating and setting aside and discharging the judgment in the sum of FIVE HUNDRED ($500.00) DOLLARS, in the office of the Clerk of Kings County, entered on the 29TH day of MARCH 1966, in favor of The People of The State of New York, against The Stuyvesant Insurance Company, as surety and FRANCIS DEAVEAREZ as principal, upon receipt by him of the order of the court,

and for such other and further relief as to the court may seem just and proper in the premises.

Stephen M. Kaplan

Sworn to before me
this 6th day of March 1966

Carl J. Lachman
Notary Public
New York State
Commission Exp.
3/30/67
24 3192200

SCCQ-1002—8-63 135

3790

SUPREME COURT, QUEENS COUNTY
CRIMINAL TERM, PART I

WED:ah

THE PEOPLE OF THE STATE OF NEW YORK

--against--

PRISCILLA (Patricia) STEVENS,
Principal,

THE STUYVESANT INSURANCE CO.
Surety

BY ALBERT H. BOSCH, J.

DATED June 7, 1965

S.P.No. 627

Upon payment of TEN ($10.00) Dollars costs by the moving party to the District Attorney of Queens County, this motion is granted. Submit order.

The clerk of the Court is directed to mail a copy of the decision to the attorney for the surety.

ALBERT H. BOSCH
J.S.C.

SUPREME COURT STATE OF NEW YORK
COUNTY OF QUEENS:Criminal Term

PEOPLE OF THE STATE OF NEW YORK,
Plaintiff,

-against-

THE STUYVESANT INSURANCE COMPANY,
Surety,

-for-

ALBERT ADKINS(Two Motions),HENRY DOKTOR (Two Motions),Frank Roberson(Two Motions), Walter Hardy (Two Motions),Bill Brown (Two Motion),Laurras Hobbs (Two Motions)
Principals.

AFFIDAVIT)
STATE OF NEW YORK)SS:
COUNTY OF NEW YORK)

STEPHEN M. NAGLER, being duly sworn deposes and says:

1. I am the attorney for the Surety in all of the above entitled matters. All of these matters are on the calendar of the Criminal Term as Bail Forfeiture Remission Motions. All are on the Calendar for said Court on January 30, 1967.

2. I am presently serving as Legislative Counsel to the New York State Assembly. My duties require that I be present in the City of Albany, State of New York, on Monday and Tuesday, January 30 and 31st 1967. For that reason I will be unable to be in attendance at the Supreme Court, State of New York, Criminal Term on January 30th 1967 for the above entitled motion.

3. I have previously been engaged to represent 22 defendants in the case of People v Lucy Flynn et al in the Criminal Court of the City of New York, County of New York, Part 2A, on Wednesday February 1st, 1967 and will therefore be unable to appear before this Court on February 1st.

WHEREFORE,I respectfully request that the above entitled motion

be adjourned to ~~Friday February 3rd,~~ Thursday, February 2nd. 8 P.

Stephen M. Nagler

Stephen M. Nagler, Esq.

Sworn to before me this

26th day of January 1967

Carl Rachlin

CARL RACHLIN
Notary Public, State of New York
No. 24-3192200
Qualified in Kings County
Certs. filed with Kings & N.Y. Co. Clks.
Term Expires March 30, 1967

TO ALL TO WHOM THESE PRESENTS SHALL COME
OR MAY CONCERN,

GREETING: KNOW YE, That Eugene Sklar

hereinafter known as party of the first part for and in consideration of the sum of One Dollar ($1.00) lawful money of the United States of America to myself in hand paid by The World's Fair 1964-1964 Corporation; Pinkerton's National Detective Agency, Inc.; the World's Fair Police Department; the City of New York; the Police Department of the City of New York; the Department of Parks of the City of New York; the Port of New York Authority; the State of Florida; the Florida Development Commission; the Florida World's Fair Authority, Inc; Mr. Edward A. Soucy, General Manager, Florida World's Fair Authority, Inc.; Mr. Ben H. Dickens, Attorney, Florida Development Commission and Legal Counsel, Florida World's Fair Authority, Inc.; and any and all of the officers, directors and employees of any of the foregoing; and the following members of the World's Fair Police Department:

hereinafter known as parties of the second part, the receipt whereof is hereby acknowledged, have remised, released, and forever discharged and by these presents do for my heirs, executors, and administrators and assigns, remise, release and forever discharge the said parties of the second part their heirs, executors, administrators, successors and assigns of and from all, and all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckoning, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands whatsoever, in law, in admiralty, or in equity, which against said parties of the second part, I ever had, now have or which I or my heirs, executors, or administrators, hereafter can, shall or may have for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of these presents.

This release may not be changed orally.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the 31st day of December in the year one thousand nine hundred and sixty-four.

Sealed and delivered in the presence of John M. Burns

Eugene Sklar

STATE OF NEW YORK)
: ss.:
COUNTY OF QUEENS)

On the 31 day of Dec 1964 before me came Eugene ~~Robert~~ Sklar to me known and known to me to be the individual described in and who executed the foregoing instrument and acknowledged to me that executed the same.

John E. Nuernberg
Notary Public State of New York
Reg No. 8999915
Comm. Exp. 3/30/66

TO ALL TO WHOM THESE PRESENTS SHALL COME
OR MAY CONCERN,

GREETING: KNOW YE, That Jimmy Jones Jr

hereinafter known as party of the first part for and in consideration of the sum of One Dollar ($1.00) lawful money of the United States of America to myself in hand paid by The World's Fair 1964-1964 Corporation; Pinkerton's National Detective Agency, Inc.; the World's Fair Police Department; the City of New York; the Police Department of the City of New York; the Department of Parks of the City of New York; the Port of New York Authority; the State of Florida; the Florida Development Commission; the Florida World's Fair Authority, Inc; Mr. Edward A. Soucy, General Manager, Florida World's Fair Authority, Inc.; Mr. Ben H. Dickens, Attorney, Florida Development Commission and Legal Counsel, Florida World's Fair Authority, Inc.; and any and all of the officers, directors and employees of any of the foregoing; and the following members of the World's Fair Police Department:

hereinafter known as parties of the second part, the receipt whereof is hereby acknowledged, have remised, released, and forever discharged and by these presents do for my heirs, executors, and administrators and assigns, remise, release and forever discharge the said parties of the second part their heirs, executors, administrators, successors and assigns of and from all, and all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckoning, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands whatsoever, in law, in admiralty, or in equity, which against said parties of the second part, I ever had, now have or which I or my heirs, executors, or administrators, hereafter can, shall or may have for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of these presents.

This release may not be changed orally.

IN WITNESS WHEREOF, have hereunto set hand and seal the day of in the year one thousand nine hundred and sixty-four.

Sealed and delivered in the presence of

Jimmy Jones Jr

STATE OF NEW YORK)
: ss.:
COUNTY OF QUEENS)

On the 8th day of Feb 1964 before me came Jimmy Jones Jr to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

Sidney Henkin

SIDNEY HENKIN
NOTARY PUBLIC, STATE OF NEW YORK
No. 41-1768450
Qualified in Queens County
Term Expires March 30, 1967

ORDER SETTLING CASE

The foregoing case on appeal, containing all the evidence is hereby settled and ordered on file.

Dated:

Judge, Criminal Court of the
City of New York

CLERK'S RETURN ON APPEAL

I, the undersigned, Clerk of the above-named Court, respectfully make return to the Appellate Term of the Supreme Court for the First Judicial Department and certify upon the affidavit of the appellant's attorney that there are hereto attached correct copies of the Notice of Appeal and of all papers required to be returned pursuant to the ~~Civil~~ CRIMINAL Court Act of the City of New York and the Rules and Regulations of the Appellate Term of the Supreme Court for the First Judicial Department.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the above-named Court this.....day of .....19.....

.....
Clerk

TO ALL TO WHOM THESE PRESENTS SHALL COME
OR MAY CONCERN,

GREETING: KNOW YE, That MARTIN RUBIN

hereinafter known as party of the first part for and in consideration of the sum of One Dollar ($1.00) lawful money of the United States of America to myself in hand paid by The World's Fair 1964-1964 Corporation; Pinkerton's National Detective Agency, Inc.; the World's Fair Police Department; the City of New York; the Police Department of the City of New York; the Department of Parks of the City of New York; the Port of New York Authority; the State of Florida; the Florida Development Commission; the Florida World's Fair Authority, Inc; Mr. Edward A. Soucy, General Manager, Florida World's Fair Authority, Inc.; Mr. Ben H. Dickens, Attorney, Florida Development Commission and Legal Counsel, Florida World's Fair Authority, Inc.; and any and all of the officers, directors and employees of any of the foregoing; and the following members of the World's Fair Police Department:

hereinafter known as parties of the second part, the receipt whereof is hereby acknowledged, have remised, released, and forever discharged and by these presents do for my heirs, executors, and administrators and assigns, remise, release and forever discharge the said parties of the second part their heirs, executors, administrators, successors and assigns of and from all, and all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckoning, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands whatsoever, in law, in admiralty, or in equity, which against said parties of the second part, I ever had, now have or which I or my heirs, executors, or administrators, hereafter can, shall or may have for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of these presents.

This release may not be changed orally.

IN WITNESS WHEREOF, I have hereunto set MY hand and seal the 16 day of DECEMBER in the year one thousand nine hundred and sixty-four.

Sealed and delivered in the presence of

Martin Rubin

STATE OF NEW YORK)
: ss.:
COUNTY OF QUEENS)

On the 16 day of DECEMBER 1964 before me came MARTIN RUBIN to me known and known to me to be the individual described in and who executed the foregoing instrument and acknowledged to me that executed the same.

Edward J. Slavin

EDWARD J. SLAVIN
NOTARY PUBLIC
KINGS COUNTY CLERK'S #
24-9040400
COMM. EXP. 3/30/66

TO ALL TO WHOM THESE PRESENTS

SHALL COME OR MAY CONCERN

GREETING: KNOW YE, THAT

The Congress of Racial Equality, Inc. a membership corporation duly incorporated by virtue of the laws of the State of New York in behalf of_____its agent and/or member herinafter known as party of the first part for and in consideration of the sum of One Dollar ($1.00) lawful money of the United States of America to itself in hand paid by the World's Fair 1964-1965 Corporation; Pinkerton's National Detective Agency, Inc.; the World's Fair Police Department; the City of New York; the Police Department of the City of New York; the Department of Parks of the City of New York; the Port of New York Authority; the State of Florida; the Florida Development Commission; the Florida World's Fair Authority, Inc.; Mr. Edward A. Saucy, General Manager, Florida World's Fair Authority, Inc.; Mr. Ben H. Dickens, Attorney, Florida Development Commission and Legal Counsel, Florida World's Fair Authority, Inc.; the New York City Transit Authority Police Department; the Criminal Court of the City of New York and its members; and the particular arresting officer(s) of the releasee herein named; the Government of the United States and its agents; and any and all of the officers, directors, and employees of any of the foregoing; and the following members of the World's Fair Police Department:

hereinafter known as parties of the second part, the receipt whereof is hereby acknowledged, have remised, released, and forever discharged and by these presents do for its heirs, executors, and administrators and assigns, remise, release and forever discharge the said parties of the second part their heirs, executors, administrators, successors and assigns of and from all, and all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckoning, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands whatsoever, in law, in admirality, or in equity, which against said parties of the second part, he ever had, now have ow which he or his heirs, executors, or administrators, hereafter can, shall or may have for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of these presents.

AND be it further known that the Congress of Racial Equality, Inc. for the aforementioned consideration, agrees to indemnify, and hold free of liability all of the aforementioned parties of the second part against any suit or judgment by_____ _____against them, and to pay any judgment against any of the parties of the second part stemming from any action against them by_____! and agrees on due notice and request in writing, to undertake the defense of any and all claims or suits against any or all of the parties of the second part by _____.

173 (X) — Disp. or Needed court date

9 # Bail Problem 82

WORLD'S FAIR June 11, 1964 REV.

	NAME	ADDRESS	TELEPHONE	DATE
(X) [	Abel, Katy 1368 (F)	26 Summit Av. Larchmont, N.Y.		6/17
(X)	Abrashkin, Wm. B-2400,83 (S)	220 W. 104 St. New York, N.Y.		6/17
F [	Adkins, Albert 1302,34,18 (F)	201 Clinton Av. Brooklyn, N.Y. Call John Krumm		~~6/22~~ 8/11
(X)	Adler, Elizabeth (ER) B-2414,97 (S)	250 E. 105 St. New York, N.Y.	Warrant	6/17
(X) $	Alexander, Sue B-2276,77 (City)	125 E. 106 St. New York, N.Y.		6/17
~~#~~ § X	Alper, Donald B-2322,23 US.	275 Babcock Hall, Boston Coll Rm. 917 ~~Bill Dorm~~ 617 Hi 5-9458 130 Arnold Road Newton, Mass. 566-7538 Parents = 617 332-0867		1/31/66 ~~6/11~~ BFBW
	Amlin, P.	701, Irving Syracuse	475-9702	
(X)	Amour, Steve (S)	855 W. End Av. New York, N.Y.	UN 4-2653	6/17
[	Anderson, Franklin 1169,70 (US)	177-44 Baisley Blvd. So. Jamaica, N.Y. Call Stan Williams	Guilty on 71	6/26 ~~(SS)~~ ~~6/11~~
(X) §	Asgersson, Eula B-2237,8 (City)	245 E. 110 St. New York, N.Y.		6/17
	Banks, Gilbert B-2210,11	319 Nostrand Av. Brooklyn, N.Y.		6/18
	Banks, Hamilton	118-17, 153 St. Jamaica, N.Y.		

Bardin, Hillel 1212 (City)	19 W. 65 St. New York, N.Y.	MO 6-8763 Plea 722 55	~~6/17~~ 6/30
Barron, Jerry B-2245 (City)	5000 Broadway New York, N.Y.		6/18
Barton, Michael B-2403,86 (S)	315 E. 65 St. New York, N.Y.		6/17
Bosco, Monique (S) B-2498, 2581,2415	4105 Cote des Neiges Montreal, Canada		6/17 6/22(?)
[Baumann, Holly (Little - Married to William Little) 1148,49 (US)	612-16 Apex Pl. Forest Hills, N.Y. 523-8234		~~6/17~~ 6/26
[Beacholor, Wm. 1185,91 (US)	92-42 185 St. Jamaica, N.Y.	Plea 722 Dismissed 1951	~~6/17~~ 6/26
[Bell, Verla 1216 (City)	Gen. Del. Clinton, La.	Plea 722	Defaulted bail 6/17
Beiber, Thos.(ER) B-2482,2399 (S)	607 Furnald Av. _____, Conn.		~~6/17~~
[Berman, Andrew 1178 (US)	173-09 Jewel Av. Flushing, N.Y.	Dismissed DA	~~6/17~~ 6/26
Boch, Arlene (S) B-2409,92	33 Watkins Av. Woodbury, N.J.	TI 8-6739	6/17
put under F ~~Bohonan, Farmanica~~ Bahamein, Farmanjan 1197 (US)	104 York New Haven, Conn.	Acquitted	~~6/19~~ 7/9 II B
F [Boockcheim, Murry 1365 (F)	27 E. 13 St. New York, N.Y.	Dismissed	~~6/17~~ 7/14
§ Bonner, Rebecca X B-2256,7	45 W. 90 St. Princeton, N.J.	TR 3-1732	~~6/12~~ 8/25 II B

Brady, Mark 1128,29	111-31 77 Av. Forest Hills, N.Y.			6/17
Braddock, Geo.				
X Braverman, Jan $ B-2280,79 US	Box 1931 Brett Hall Rutgers, 94 Paterson St New Brunswick 201-545-7711			~~6/16~~ 8/25
Brisker, Bonnie. B-2348 (S)	N.Greenwich, N.J.		CH 7-8699	6/17
Brogan, Patrick 1232	521 Furn ald Hall		MO 6-5000	6/17
F [Brown, Bill 1321, 1305 (F) 1337	513 W. Carolina Talahassee, Fla. 186 W80 nyc TR48065			~~6/22~~ 8/11 IIB
$ Brown, Claudia B-2304,09 (City)	209-35 112 Av. Jamaica, N.Y.			6/17
[Brown, Emmelda 1371 (F).	411 Bedford Av. Mt. Vernon, N.Y.	Dismissed - DA.	MO 8-4765	~~6/17~~ sen 7/1
[Brown, Marshall 1300 (F)	84 Ravine Av. Yonkers, N.Y.		YO 3-7190	~~Bail reinstated 6/22~~ 8/11
[Bubabin, Geo. 1359 (F)	193 Second Ave.			6/17
[Bulkin, Joel 1166,68 (US)	71-61 162 St. Queens, L.I.	Plea 7225S Dismiss 1851		~~6/22~~ 7/28
Butler, Jacqueline B-2346 (S)	St. Louis		FO 1-1341	Bail reinstated 6/17
Canada, Frederick 1346, 1408,22	110-29 172 St. Jamaica, N.Y.			6/19

(+)		Chernosfky, Daniel B-2405,88	333 Ovington Drive Brooklyn, N.Y.		
		~~Chernowitz, Alex~~	~~(Private Counsel)~~		~~6/8 6/10~~ ©
(+)	§ X	Clark, John B-2337,39 (NYC)	Box 6418 U. of Rochester	CH 4-8200 C-01	6/15
(X)	§	Clark, Jimmie 1299, 1315,31 (F)	109-76 142 St. Jamaica, N.Y.	Dismissed DA.	~~6/22~~ 8/11 II B
		~~Clayton, Morris~~			
(+)		Cohen, Jerry B-2406 (S)	600 W. 113 St. New York, N.Y.	UN 4-9243	6/17
(+)	§	Conway, Dorothy B 2240474	111-04 204 St. Jamaica, N.Y.		6/17
—	§	Cook, Ronnie B-2283,4 (US)	611 E. 6th St. New York, N.Y.		~~6/17~~ 8/25 II B
(X)	[	Corbett, Phyllis 1306,22,38 (F)	69 Pinehurst Av. New York, N.Y.		~~6/22~~ 8/11 III B
(X)	[	Cohen, Karen 1292 (F)	510 Riverdale Yonkers, N.Y.		~~6/22~~ 8/11 II B
		Callender, Herbert B-2234,5 (L & F)	755 E. 168 St. John Burns (atty)		6/18
		~~Coy, Ronald~~ ~~1205~~	~~142 McDougal St.~~ ~~New York, N.Y.~~		~~8/3~~
(+)	[X	Crowner, David 1156 (US)	160 Bevier Rd. Rutgers N.Brunswick, N.Y.	246-1748	6/16

(X)	Curvin, Robert (S) B-2366, 2444, 2361	136 W. Market St. [106 Huntington Terr. Newark, N.J. NB: 623 is a Newark tel. no.]	623-9157	6/17
(X)	§ Dantzler, Thelma B-2314,5 (City)	187-22 Keyville St. Queens, N.Y.		6/17
(X)	[Davis, Ivey 1373 (s) (F)	1706 Davidson Av. Dismissed DA.	914 MO8-4765	~~Bail reinst.~~ Sen ~~6/17~~ 7/1
	Davis, Mars	Box 1 Clinton, La.		
(X)	[Davis, Loria 1210, (City) 1209	Box 1 Clinton, La.	PG 722 Dismissed 1851	BF
(X)	[Davis, Paul 1172,3,4 (US)	Transferred to Elmira ~~Wed 10th~~ - now in Elmira - 12/13/65 now 16. 107-~~38~~ 159 St. Jamaica under 21. MOTHER = 523-2803 Children's Shelter		6/17
	Davis, Roy			~~6/17~~
	~~Dibliase, Benjamin~~			
(X)	Dickson, John 1186,93 (US)	104-30 203 St.	PG 722 Dismissed 1851	~~6/19~~ 7/9 H.B
(X)	Digilio, Joseph 1233,40,47 S	39-67 47 St. Long Island City, N.Y.		6/17
(X)	Dix, Peter (S) B-2454, 2371	525 W. 113 St. New York, N.Y.		6/17
	[Dixon, John			Bail Revoked 11/27/65
(X)	[Doctor, Henry 1297, 1313,1329 (F)	2013 5th Av. New York, N.Y.		~~6/22~~ 8/11 II B

	Doe, John (Maybe B-2231,32,33)	(see Hist, Owen)		6/19
X	Dravich, Jay B-2427	81-10 135 St. Kew Gardens, NY	BO 8-2724	6/17
X	Drew, Joseph 1234	1301B New Hall Col. U.	MO 6-9000	6/17
X	Duberman, David 1235,42,49	360 Riverside Dr. New York, N.Y.		6/17
X [	Due, Patricia (F) 1298, 1314, 1330	Talahassee CORE Florida - Rte. 2, Box 37 Quincy, Fla.		~~6/22~~ 8/11 II B Bail Revoked 8/27/65
	Dukes, Rever. (Maybe Nelson C. Dukes?) B-2206	(30-39 Edson Av., Bronx)		~~6/23~~ 6/23
X	Durham, Steve B-2377 (S)	31 E. 7 St. New York, N.Y.		6/17
X §	Einhorn, Carl B-2328,9 (City)	68 Montague St.	MO 2-8751	6/17
X [	Eisenberg, Eric 1255	387 E. Mosholo Pkw. New York, N.Y.	OL 2-2916	~~6/24~~ 7/27 ~~6/17~~ B-3
	~~Ender, Eric~~			6/17
On Appeal [	Epstein, Howard 1190 (US)	48-29 190 St. Flushing	Guilty = 722,185, FL 7-7399	~~6/19~~ 7/9 II B
	~~Delgado, Rafael A~~ B-2227,8	~~210 E. 102 St.~~ ~~New York 29~~, N.Y.		6/18
X	Espada, Frank B-2380 (S)	245 Wortman Brooklyn, N.Y.		6/17

[	Farber, Tedi 1164	537 E. 6 St. New York, N.Y.	OR 4-6123	6/23 P-III
§	Farmer, James A. B-2300, 2305 (City)	38 Park Row New York, N.Y.	CO 7-6270	6/19 6/17
	~~Farrar, Winifred~~ ~~B-2502, 85, 2419 (S)~~	~~130 Fairview~~ ~~Teaneck, N.J.~~		~~6/17~~
	~~[Farmain, Barbara (?)~~			
	Feingold, Paul B-2429 (S)	205 Albany Av. Brooklyn	PR 3-3715	6/17
	~~Feist, Fritz~~	~~6 E. 74 St.~~ New York, N.Y.	TR 9-0126	
	~~Ferguson, Earthline~~ ~~B-2226~~	~~121 W. 123 St.~~		
	Fielding, Dorothy 1349	3001 Broadway New York, N.Y.	UN 5-9000	6/17
	Fisher, John B-2370 (S)	33-47 14 St. Long Island City, N.Y.		6/17
	~~Flesch, Walter~~ ~~B-2208,9~~	~~527 E. 12 St.~~ ~~New York, N.Y.~~		~~6/18~~
	Flug, Michael B-2384 (S)	237 W. 105 St. New York, N.Y.	MO 3-6426	6/17
	Foa, Sylvania B-2355 (S)	3001 Broadway New York, N.Y.	UN 5-9000	6/17
	Forbes, Wm. B-2404 (S)	232 E. 6 St. New York, N.Y.	CA 8-4647	6/17

	Ford, Louis B-2392 (S)	4566 Kensington	JE 5-7898	6/17
	Foster, Joan B-2410 S	984 Findlay	JE 8-1794	6/17
§	Fruchter, Norman B-2266,7 (City)	188 Sixth Ave.		6/18
[	Gabrielsky, Rob. 1366,80,~~88~~ (F)	Pd'mailed (85) PF 722		~~6/17~~ 7/1
	Galper, Jeffry B-2402 (S)			6/17
	Geiger, Helen B-2413,96 (S)	182 E. 2 St. New York, N.Y.		6/17
§ X	Gethers, Joan B-2318,9	1452 Wilkens Av. Bronx, N.Y.		6/17
	Gilbert, Nelson 1347 S	807B.,77PW Columbia U.	MO 6-9000	6/19
[	Gilford, Lisa (She is 17. Her parents belong to 7 Arts) 1184 ah	75 Bank St. New York, N.Y.	OR 5-8891	6/23 P-3
	Gilmartin, Allan B-2310 ah	250 Mount Vernon Pl Newark, N.J.		6/18
§	Glover, Gular B-2297 (City)	204-12 100th Av Hollis, N.Y.		BW
	Glusakow, Bruce 1351	87 E. 3 St. (18) New York, N.Y.	OR 4-0857	6/19
§	Gordon, Paula B-2274,5	2050 2d Av. New York, N.Y.		6/17 6/12

§	Gould, Paul B-2342,3 (NYS)	86 Seneca St. Binghampton, N.Y.		6/17	8/11 II B
	Gordon, Richard 1295	22 Aroing Av Merrick, LI	516- FR 96025		
	Green, Ed. Smith (Smith-Green, Ed) 1226,7,8 ~~(City)~~	5808 Faragut Rd. Brooklyn, N.Y. Subway		6/24	
§	Green, Ernst B-2301,06	397 1st Av.	MU 4-4094 PR 3-1313	5/28	6/19 6/17
§	Greenberg, Michael US	2254 3d St. East Meadow, L.I.	201 CL4-1195	~~6/16~~	8/25 II B
	Gripper, Vernall 1304,20,36 (F)	310 M St. Washington, D.C.		~~6/22~~	8/11 II B
	Groves, Brent (ER) B-2388 (S)	365 W. 25 St. (7E) New York, N.Y.	CH 2-8477	6/17	
§	Gruzen, Marjorie (ER) 2332,3 (City)	437 E. 12		6/15	
	Gutman, M. 1142,3 (City)	157-24 20 Rd.	PG - 722 Diamond 1851	~~6/18~~	8/7 II B
§	Hahlbohm, Wm. B-2341,38 (NYS)	261 Broad St. Bridgeport, Conn.		Defaulted bail 6/17	
	Hall, Loreta B-2422, 2505 (S)	1510 Biddle St. Louis (?)	MA 1-1190	6/17	
	~~Heinigg, Paul~~ ~~1133, 37~~	~~151 Midwood St.~~ ~~Brooklyn, N.Y.~~		~~6/16~~	
	Hardy, Herbert B-2362 (S)	4418 Delmar St. Louis	FO 1-3285		
	~~Hardy, Walter~~ ~~1134,5~~	~~426 Battic St.~~ ~~Brooklyn, N.Y.~~		~~6/16~~	

[	Harrington, Donald 1215,21 (City)	Community Church 10 Park Av., New York, N.Y.		6/17
[	Harrington, Michael 1214,20 (City)	43 Carmine St.		~~6/17~~ 6/30 Sen
	Harris, Clayton B-2242,4	100-39 205 St. Hollis, L.I.		6/12 ? 6/17
	Harris, Jane B-2417 (S)	101 Av. B New York, N.Y.	OR 3-8721 SP 7-3888	6/17
	Harris, Jonathan B-2368 (S)	101 Av. B New York, N.Y.	OR 3-8721	6/17
§	Harris, Mary (US) B 2242	9 Hemingway Av. New Rochelle, N.Y.		~~6/8~~ 8/25 IIB
[	Hawley, Ellen 1116	10 Pershing Av. Yonkers, N.Y.		6/12
[	Harris, Robert 1261	343 E. 8 St. New York, N.Y.	SP 7-9019 Dismissed Dft. ~~Plea 1855 Page~~	~~6/24~~ 8/25 7/27
	Heifetz, Henry B-2254,5	39 W. 87 St. New York, N.Y.	Dismissed 1851 Plea 722	7/2
§	Hewitt, Sarah B-2281,2 (US)	3350 Perry Av. Bronx, N.Y.	Plea 722 Dismiss (851)	~~6/17~~ 8/25 IIB
	Hist, Owen (John Doe?) B-2231,2,3			6/19
[	Hobbs, Lanorres or Hookes, Loutras 1307, 1339 (F) 1328	516 E. 6 St., N.Y.C. Talahassee CORE		~~6/12~~ 8/11 IIB
	Holpert, James 1225	780 Gr. Concourse Bronx, N.Y.		6/24

X	§ X	Horowitz, Rachelle(ER) B-2303,08 (City)	311 W. 24	Plea #722 Dismissed 1851	6/19
X	[	Hurwitz, Thos. 1181 (City)	43 W. 93 St. New York, N.Y.	RI 9-4335	~~6/19~~ Sen 7/9
X		Hutchings, Vivian B-2457, 2546, 2374 (S)	214 Orange St. Newark, N.J.		6/17
X		Insolia, Joyce (S) B-2458, 2547, 2375	27 Mangett Pl. Greenlagon, L.I.		6/17
X	§	Jackson, Blyden B-2316,7 (City)	81 E. 125 St. New York, N.Y.		6/18
X		Jacobs, Alice B-2347, 2514 (S)	217 16 Fort Lee, N.J.		6/17
X		Jacobs, Martin (S) B-2506,89, 2423	21 71 B Central Rd. Fort Lee, N.J.		6/17
X		Jaffe, Robert (S) B-2397, 2480	98-30 67 Ave. Queens, N.Y.		6/17
X		Jampel, Sheila B-2353 (S)	768 E. 21 St. Brooklyn, N.Y.	GE 4-2424	6/17
X		Jasmin, Judith B-2495, 2412 (S)	3600 Ridgewood Montreal, Canada		6/17
X		Jasper, Paul B-2387 (S)	68 W. 106 St. New York, N.Y.	UN 6-2289	9/14
X	[	Jenkins, Loren (ER) 1308,24,40 (F)	205 E. 105 St. New York, N.Y.	223 Congress St. Bklyn. 7. Pioneered	~~6/22~~ 8/11 DA-IL B

~~Johnson, Marjorie~~

~~67 St. Tom~~

[Jones, Jimmie
1150, 1 (US)
177-11 197 St.
St. Albans
Fi 1-2993
now in Fla. in Army. ~~6/16~~ 6/26

(A) Jones, Taylor
B-2390 (S)
2704 Ill. St.
E. St. Louis, Ill.
UP 5-4243
6/16

[Jones, Wm.
1155, 60 (US)
new address → 110 CONVENT Ave, apt 27
~~2657 Herrick Rd.~~
~~516 TA6-2140~~
Bellmore
516 SW1-7038 ~~6/16~~ 6/26
→ SW4-7004

(X) Kagan, Georgette
B-2357 (S)
617 W. 113 St.
New York, N.Y.
RI 9-5281
6/17

(X) [Kahn, Thos. (ER)
1211, 17 (City)
397 8th Ave.
New York, N.Y.(?)
Dismissed - DA.
~~6/17~~ 6/30

~~[Kalimtgis, Gus~~
(US)

(A) Kehoe Katherine Kathleen
1269, 82 (NYS)
31 Monroe St.
D
6/15

~~Kalengert, Gus or~~
~~Kanelbgert~~

~~Kalin, Thos.~~

Kalimtgis, Gus
~~1188~~, 96 (US)
in Salonica, Greece
AX1-2244 - sister - JA 3-2453
Kayl Kavounakis
88-10 139 St.
Flushing, N.Y.
built 722 (#1789)
in school in Europe.
~~6/19~~ 7/9
IIB

(X) Katz, Jeffrey
1263 (NYS)
1800 Davidson Av.
Bronx, N.Y.
TR 2-5449
6/15

(X) [Keary, Ershine
[illegible] 75, 93
264 6th Ave.
New York, N.Y.
6/17

(X) $ Keith, Frances
X B-2264,5 (City)
25 W. 110 St.
New York, N.Y.
6/17

X	§ X	Kerr, Eva (ER) B-2250,1 (City)	129 Suffalh St. New York, N.Y.		6/17
X		Kellen, Elliot 1264 (NYS)	80 Thompson		6/15
X	§	Kinsler, Michael B-2326,7 (City)	740 Noble Ave. Bronx, N.Y.		6/15
		~~King, Everett~~	~~St. Louis~~	~~FO 1-5028~~	
		~~King, Ernest~~	~~75-57 263 St. Glen Oaks, N.Y.~~		~~5/28~~
X		Klein, Michael B-2395 (S)	259 Clinton Pl. Newark	WA 6-5460	6/17
X	§	Komatsu, Kit B-2334,5 (City)	137 E. 12 St.		6/15
		~~Koplin, Philip B-2207~~	~~279 Henry St.~~		~~6/22~~
X	§ X	Larsen, Robert B-2324,5 (City)	c/o Reuben 15 Washington Pl.	GR 5-3818	6/17
X		Lawson, Carol 1270 (NYS)	Box 5952 U. of Rochester	634-CH 4-8200	6/15
X	[	Leicester, Elizabeth 1183	119 Waverly Pl. New York, N.Y.	GR 5-1372	6/23
~~X~~	§	Lippert, Marla B-2253,52 VS	48-36 190 St. Flushing, N.Y. Private Counsel	Plea 7-22-55 Dismissed (85)	~~6/12~~ 8/31
		Levy, Builder 1132,36	239 Bay 22 St. Brooklyn, N.Y.		~~5/27~~ P-3 6/16
X		Lerner, Elinor 1271 etc			6/25

[	Little, Wm. 1175, 76, 77 (US)	89-50 146 St.	523-8234	6/26 ~~6/17~~
[	Lloyd, Robert 1199 (US)	435 Riv. Dr. Chi (?) 34-25 W. Monroe Chi.	NE 8-5178 Acquitted	7/9 ~~6/19~~ II B
	Louis, Joseph B-2382, 2465 (S)	East Riv. CORE 129 Suffolk St., N.Y.C.		6/8 6/17
§ X	Ludwig, Gilbert B-2258,9 (US)	Box 706 142 Ford Hall Rutgers, New Brunswick, N.J.	Dismiss 1851 CH 7-1766 Plea 722-X6247	~~6/17~~ 8/25
[	Lymis, Carlyn 1146, 47 (US)	204-09 45 Rd.	Dismiss 1851 PG 722 SS	6/26 ~~6/17~~
	Madison, Wm. B-2236	115-47 196 St. St. Albans	stet	~~6/18~~
	Maidman, Paul (S) B-2386 (Maynard)	110 Furnald Hall	MO 6-5000	6/17
	Manuel, George B-2428, 2511 (S)	570 Lexington Ave. Brooklyn, N.Y.		6/17
[	Mapp, Thos. 1198, 1207 (US)	164-32 109 Rd.	Acquitted	7/9 ~~6/19~~ II B
	Mappori	164-32 109 Rd. (?) Jamaica, N.Y.		
	Margolies, Michael 1-A 1898, 99, 1900	117 Ludlow St.		~~6/16- 1-A~~
	Markman, Barry 1202, 03, 04	25-28 Cruger St. Bronx, N.Y.		~~6/8~~)Dism. ADA 6/29)SS.

X] (X)	Marchand, Jacques (leaving US 6/27 1157 (US)	Box 568 Rutgers New Brunswick 1157	CH7-1766 EX6247	6/16
put under R	Rubin, Martin 1194, 1187 US	35-05 ~~90~~ St. Jackson Hts. c/o Martin Rubin Cal		~~6/19~~ 7/9 TTB
(+)	Martin, Russell (S) B-2570,2477,2394	192, 2nd Ave. Westbury, L.I.		6/17
(+)	Martinez, Nicassio 2289,90	224 Edgecom Av. New York, N.Y.		6/17
(X) [	Mervin, Randy 1253	24 Narcissus Dr. Scorett		~~6/24~~ 7/27
(+)	Miller, Florence B-2411 (S)	3784, 10 Ave. NYC	LO9-6368	6/17
(+)	Miller, Robert B-2363 (S)	220 W., 104 St.	UN5-1718	6/17
X[	Miller, Wm. 1158, 63 (US)	201-356-0414 ~~210 Berrien Rd~~. 459 Patterson Ave Rutgers Bound Brook, N.J. ~~New Brunswick, N.J.~~ Previously Pleaded guilty.	CH6-0989	~~6/16~~ 6/26
(+)	Miranda, Victor Jr. B-2425,2591 (S)	East Riv. Core 170 E., 107 St. New York		6/17
(+)	Mitchell, Eliz. B-2372 (S)	604 W., 115 St. NYC		6/17
(+)	Mitchell, Jeffrey B-2360 (S)	604 W., 115 St. NYC		6/17
(+)	Moore, Booker B-2359 (S)	4030 St. Ferdinant St. Louis	CE1-8943	6/17
(+)	MORA, Dennis			

Moore, Gladys B-2349 (S)	1551 Carr. Dr. St. Louis	CE1-8943	6/17 Bail reins.
Murphy. Maureen B 2241,3 (US)	120 E., 4th St.	Pioneer 1851 Plaza 72255	~~6/17~~ 8/25 II B
Myers, Robin 2262,3 (US)	2075, 2nd Ave. Brooklyn		6/18
McCormick, Bob 2311	3150 Bway. NYC (?)		
McLaug1lin, Andrew 1265 ((NYS)	26 Mineola St.	BE5-6345	6/15
~~Napper, Marjorie (2213,4,5~~	~~178 Amity(?) St. Brooklyn~~		~~6/18 BW~~
~~Nelson, Robert~~	~~350 W., 18 St.~~	~~WA9-4241~~	
Nives, Robert 1363 (F)	377 ~~Bengas~~ Bergen St. Brooklyn	Diamond DA.	~~6/17~~ 6/26 ??
Norton, Carl 1355,1417,1431	21-13, 79 St. Elmhurst		Term. Fam. Ct.
Nyden, Paul B-2378 (S)	708 New Hall Col. U.	MO6-9000	6/17
Oesterreichter, Arthur B-2366,2449 (S)	1075 Liachia Ave. Teaneck, N.Y.		6/17
O'Gorman, Joan (S) B-2584,2501,2418	173 Jane St. Englewood, NJ		6/17
Opatshu, Dan 1360,90(F)	190 Riverside Dr. NYC	Diamond	6/17

Oliver, Jim — 342 W., 71 St. — TR3-5999
NY — NYC

(X) Oliver, Harvey — 478 Belmont Av. — BI3-1624 — 6/17
(S) B-2381 — Newark

(X) Oliver, Melvin — Stet — 6/17 P3
B-2381 — S

Padow, Robert — 215 W., 23 St. — 6/16
1A 1897,1901.02 — NYC

38 LEE Ave. 201 846-2703 6/26

X[Padwee, Michael — ~~19 Union St.~~ — CH7-1766 — ~~6/16~~
1154,59 (US) — New Brunswick NJ — EX 6247
Master's oral exam on Thu. 201 ext 6512

(X) § Palmer. Christine — (Private Atty.) — ~~6/17~~
2312,3 (City)

(X) Pam, Robert — 714 Livingston H. — MO3-6600 — 6/19
1348

(X) [Parlin, Jeanne Lee — 177-49 105 Av. — 6/17
1144, 45 (US)

(X) § Patterson, Susan — 134 W. 15 St. — Dismiss 1851 Plea 72255 — ~~6/17~~ 8/25 IIB
2286,7 (US) — NYC

(X) § Pauly, Joan — 1264 Amsterdam Av. — Dismiss 1851 Plea 72255 — ~~6/17~~ 8/25 IIB
2285,88 (US) — NYC

[Peck, James — 552 Riverside Dr. — Sen ~~6/17~~ 6/30
1213,19 (City) — NYC

Peake, James Jr. — 342A. E.Bway.
B-2391,2474 (S) — St. Louis
2567, 2477

Penny, Gerald

8/11

X	[	Perdu, Lane 1311,27,43 (F)	Nat'l CORE Office		~~6/22~~ II B
X		Perez, Louis B-2389 (S)	237 W., 105 St. NYC	MO3-6426	6/17
X		Perlmutter, Steve B-2364 (S)	1436 Clay Av. Bronx, NY	JE7-6522	6/17
X		Perry, Ivory B-2569,2393 (S)	511 Raymond St. St. Louis	FO1-1253	6/17
X	[	Peters, Steven 1188,92 (US)	c/o Braunstein 141-19 71 Rd. Flushing, NY	B08-5984	7/9 ~~6/19~~ II B
		~~Phillips, Modestine~~	St. Louis	~~EV5-3957~~	
X	XS	Pierce, Judith 2260,61	970E, 224 St. NYC		6/17
X		Pissarevsky, Jos. B-2385,2468 (S)	Private Atty. 555 Netherland Av. NYC	PE6-4430	
X	[	Plummer, Lucielle 1310 (F)	177 Palma st. St. Augustine Florida	FL4-3690	8/11 ~~Bail rev.~~ ~~6/22~~ II B
X	[	Pearson, Eliz. 1372 (F)	19 E., 88 St.		6/17
X		Pollock, Danny 1354	5208A Cabonne St. Louis	FO1-3285	6/17
X		Post, Cynthia (S) B-2437,2521,2354	69 McDougl St. NYC		6/17

(X) Posner, Bruce — 15, 8th Ave. NYC — 6/18
B-2220,21,19

(X) Pueterman, Harriett — 348 E., 18 St. NYC — 6/17
B-2407,90 (S)

(X) Quintyne, Delores — 813 Bayview Ave. NYC — 6/17
B-2352,2435 (S)

(X) Rabin, Julius — 14 Bedford St. Brooklyn — 6/17
B-2383,2466 (S)

~~S~~ Reer, Karl V. — 868 Lincoln Pl. Teaneck, NJ — 201-836-6223 Cash bail on 2294 — ~~6/18~~ 8/25 TTB
B 2292,94 VS. — 1044 S Main Ann Arbor, Mich 313 665-5970 - WORK NOME ~~665~~

(X) X§ Reyes, Helen — 229 E., 4 St. NYC — 6/17
B 2295,6 (City)

~~Rice, Kenneth — 193 Grafton St. — 6/18~~
~~2216,7,8~~

(X) Riddick, Karen 1289,90 — 6/25

F [Roberson, Frank — 717 Gwen ~~Ave.~~ St. Talahassee, Fla. — ~~6/22~~ 8/4 TTB
1301,17,33 (F)

F [Roberts, Edward — 511 M St. Washington D.C. — 202-347-4782 — ~~6/22~~ 8/11 TTB
1303,19,1335 (F)

(X) Jaffe, Robert — 98-30 67 Ave. Queens
B-2397,2480 S

~~Robert, Lloyd~~

~~Robinson, Louis~~

(X) Robinson, Toni — 2170 Univ. Av. — SE3-1916
B-2350 (S)

Rodriguez, Ruth
B-2358,2441 (S)
1047 Faile St.
Bronx

6/17

Rodenko, Igal
1364 (F) S?
GR5-1050

Rose, Janet
2278
3925 17 Pl. NE
Washington DC

6/17 8/7

Def.Bail
BW 6/17

Rose, Joshua
1356,1418,1432
33-04, 91 St.
Jackson Hts.

5/15
Tenn.Fam.Ct.

Richard, Ilene ~~Gordon~~
1272 (F)
34-19 Irwin St.

6/15

Rosinsky, Joel
209-22 Bardwell Av.
Queens, NY

Roti, Vincent
2225
14-46 142 St.
Whitestone

Plea 72Q 6mo SS
7/2

Rubin, Martin
1187, 1194 (US)
33-05 90 St.
Jamaica

7/9

Rushing, Byron
1268 (NYS)
706 Almond St.
476-0770

6/15

Rushing, Lawrence
1268,81 (NYS)
17018 118 Ave.

6/15

Rustin, Bayard
2298 (S)
340 W., 28 St.
NYC
War Registers League

6/17

Sabler, Sandra
949,60;1130,31,1795
30-25 W32
Brooklyn

6/18

Ronel, Jemera (S)
3001 B'way
NYC
UN5-9000

(7)		Schapiro, Robert 1236	419 Furnald H.	MO6-5000	6/17
(8)	§	Schmidt, Thos. 2320,1 (City)	507 W., 113 St. NYC	MO6-2146 UN5-4000 (Ex.3195)	6/17
		Schultzer, Martin 2212			
(9)	§	Schwanschild, Henry 2299 (S)	War Registers League		6/17
(A)		Scott, Earl B-2424 (S)	Dismissed		6/17
(B)		Shafter, Ann 1357	39-15 45 St. L.I.C.		Term Fam.Ct.
(C)	[	Shatkin, Norman 1367,99,81 (F)	437 E., 12 St.		6/17
(D)	[	Sherman, Eugene 1254	62 Park Terr.W. NYC	LO9-1972 dismissed - DA.	~~6/24~~ 7/27
(E)	[	Shatkin, Joan 1370,84,1402 (F)	437 E., 12 St.		6/17
(F)	[	Siegel, Larry 1362 (F)	237 Thompson St. NYC		6/17
F	[	Sklar, Eugene 1309,25,41 (F)	103 Hammill Pl. Maywood, N.J. 201 HU7-7300 Office LE4-7900 ext	Guilty 722 (1341) on appeal.	~~6/22~~ 8/11 II B
(G)		Slutzky, Martin 1237,44,51 S	48-07 39 Ave. L.I.C.		6/17
		Sharrow, Elouise L.			

Solganick, Allen B-2401,84 (S)	4303 Rowalt Dr. Queens			6/17
Starzynski, Susan 1273	701 Irving Syracuse	475-9702		6/15
Statman, James B-2396 (S)	37-06 89 St. Jackson Hts.NY	OL1-1855		6/17
~~Stein, Robert V.~~				
Stelling, John B-2365 (S)	4254 Bates St. Louis	FLL2-3796		6/17
~~Sterling, John~~				
Stephens, Pricilla 1312, 1344 ✓(F)	14620 Filmore St. Miami, Fla.	CE8-1965	~~6/19~~ BW. stay exec. till 6/16 8/11 IIB	
Straus, Arthur 1238	48 Stanley Rd. So.Orange, NJ	SO2-7776		6/17
~~Streator, Geo.~~	~~70 SaSalle St~~ NYC	~~TR9-3100~~		
~~Sutlife, Jack~~				
Sutliff, Ralph 2239 US	840 Gr.Concourse Bronx			6/19
§ Taylor, Frances (SJ) B 2269,72 US	106-56 160 St. Jamaica -			~~6/17~~ 8/25 IIB
§ Taylor, Sandra (SJ) B 2268,71 US.	106-56 160 St.			~~6/17~~ 8/25 IIB

Teahan, Jeremiah
1126,27-948,61
9008 Flatlands Ave.
Brooklyn
6/18

X
Tenney, Gerald
B-2398 (S)
2775 Jerome Ave.
NYC
LU4-3952
6/17

X §
Thompson, John
2344,5 (NYS)
Knapp Hill Rd.
Castle Creek, NY
6/17

X
Tishman, Mark
B-2367 (S)
316 W. 90 St.
NYC
TR3-9995
6/17

Torgoff, Stephen
1120,21
290 West End.
NYC
6/17 P3

X
Trestman, Irene
1274,87 (NYS)
473 West End Av.
6/15

X
Tristan, Israel
1428
937 Greecian Pt.Rd.
Mapanac, NY
Term.
Fam.Ct.

Tournour, Eugene
1262 NYS
5700 W. Minister
St. Louis
PA7-5641
Dismissed - DA
6/24

X
Vanders, Kay (S)
B-2373 (2nd call)
500 Hudson or
c/o Miller 38CPS
NYC
PL8-3139
PL8-3139
6/17

X
Wagner, Norma
1275 (City)
253 Rosedale St.
Rochester, NY
AR3-9431
6/15

X
Walker, Margaret
1374 (F)

Wallerstein, Les
225 W., 106 St.
MO3-3435

Wallerstein, Joan
225 W., 106 St.
NY
MO3-3435

X		Wallerstein, Steve 1350	397 Thornton St. So.Orange, NJ	SO3-0783	6/19
X		Walker, Pat B-2408 (S)			6/17
X		Weinerman, Diane 1345	205 W.End Av.	TR4-0378	6/19
X	X[	Weingeist, Karen 1369,83,1401 (F)	180-33 80 Drive Private Counsel		6/17 (Pt.3)
X	S	Weinstock, Rosalind B2270,73 US	119-14 Union Turnpike Private Counsel	Plea 722 Dismiss 1851 8/31 II B	6/11 Pt.3 BF BW
		Weinstein, Judy	587 Riv. Dr. NYC	AU3-4488	
X		Weinstone, Laurie 1358,1420	39-67 47 Ave. L.I.C.		6/19 P3 Term. Fam.Ct.
X		Weisman, Dena B-2420 (S)	59-15 47 Av. Woodside, NY	HA9-6497	6/17
X	[	Weiss, Joel 1152,3 (US)	48-50 37 St. LIC	Plea 722 Dismiss 1851	6/16 6/24
	[	West, Frederick 1140,41	377 Jefferson Ave. Brklyn.	Rochlin, atty II B	6/24 P3 8/14
X		Westerfield, Barbara B-2416,99 (S)	624 Norton Kirkwood 2075, 1st Av. NYC	406-4385	6/17
X	S	Widman, Donald 2246.7	193 2nd Ave. NYC		Default BW

X§	Wilson, Theodore 2330,1 (City)	1591 Bruckner Blvd. Bronx, N.Y.	MO5-1634 (X403)	6/17
X	Winter, Frederick B-2369	243 Rugby Rd. Brooklyn	UL6-5058	6/17
X§	Wright, Alberta (SJ?) 2302,07 (City)	184-22 Keesville Av. Queens		6/17
X	Yearwood, Carlisle B-2376 (S)	523 W., 149 St. NYC	UN4-8923	6/17
X	Young, Andy	116-51 157 St. So. Jamaica	Plead to 1856	Sett 6/17
X	Young, Geneva B-2356 (S)	5714 Maple St. Louis		
X§	Zagarell, Allen 2336,40	175 Rivington NYC	OR3-4751	6/17 6/17
X	Zeifert, Marjorie B-2421 (S)	214-04 53 St. Queens	BA9-8542	Pt.3 6/17
X	Zinn, Sheldon B-2462,2379 (S)			6/17
	Zulkin, Joel	71-61 162 St. Flushing		
	Zagarell, Michael 2222,4,3	1246 Morningside Av. NYC		6/26

At a Criminal Term of the Supreme Court held in and for the County of Kings at the Courthouse at the Brooklyn Civic Center, County of Kings of the City of New York, State of New York, on the _____ day of _____, 1966.

PRESENT: Hon. Hyman Barshay
Justice, Supreme Court

People of the State of New York,

-against-

Stuyvesant Insurance Company,
Surety,

-for- Robert Delaine
~~Francis Deaveaux (a/k/a/ Francis Deaveares)~~,
Principal.

County Clerk

Index # 3900-'65

Stuyvesant Insurance Company, the surety above named having moved this Court for an order vacating the forfeiture of the undertaking executed by ~~Francis Deaveaux (a/k/a/ Francis Deaveares)~~ Robert DELAIN, as principal and said Stuyvesant Insurance Company, as surety entered in the Office of the Clerk of Kings County on the ~~20th~~ 1ST day of ~~March~~ APRIL, 1965, and said motion having duly come on to be heard.

Now on reading and filing the notice of motion herein dated the _____ day of March, 1966, together with proof of due service thereof, the affidavit of Stephen M. Nagler duly sworn to the ____ day of March, 1966, and on the consent of the District Attorney of the County of Kings stating that the People of the State of New York have lost no rights and after hearing Stephen M. Nagler, attorney for the above named surety in favor of said motion and Aaron Koota, District Attorney of Kings County, appearing but not opposing, and due deliberation having been had thereon, it is, on motion of Stephen M. Nagler, attorney for the surety,

ORDERED that the said motion be and the same hereby is granted, and it is further

ORDERED that the forfeiture of the undertaking of bail heretofore executed by ~~Francis Deaveaux (a/k/a/ Francis Deaveaux)~~ ROBERT DELAIN as principal and Stuyvesant Insurance Company as surety, which said forfeiture was entered on the ~~26th~~ 26TH day of March, 1965, be and the same hereby is in all respects vacated and set aside, and it is further

ORDERED that the judgment in the sum of ~~$1000.00~~ ONE-THOUSAND ($1,000) entered upon said undertaking so forfeited in the office of the Clerk of the County of Kings on ~~March 29th~~ APRIL 1ST, 1965, be and the same hereby is vacated and the Clerk of the County of Kings upon being served with a certified copy of this order is hereby directed to make a note of the vacation of said judgment on all indices and records of said judgment contained in his office referring to this order, and it is further

ORDERED that a copy of this order with notice of entry thereof be served on the District Attorney of Kings County with 10 days after entry thereof.

Enter,

_____

Justice, Supreme Court

SUPREME COURT STATE OF NEW YORK
COUNTY OF QUEENS:Criminal Term

PEOPLE OF THE STATE OF NEW YORK,
Plaintiff,

-against-

THE STUYVESANT INSURANCE COMPANY,
Surety,

-for-

ALBERT ADKINS(Two Motion),HENRY DOKTOR (Two Motion),Frank Roberson(Two Motion), Walter Hardy (Two Motion),Bill Brown (Two Motion),Laurras Hobbs (Two Motion)
Principals.

AFFIDAVIT)
STATE OF NEW YORK)SS:
COUNTY OF NEW YORK)

STEPHEN M. NAGLER, being duly sworn deposes and says:

1. I am the attorney for the Surety in all of the above entitled matters. All of these matters are on the calendar of the Criminal Term as Bail Forfeiture Remission Motions. All are on the Calendar for said Court on January 30, 1967.

2. I am presently serving as Legislative Counsel to the New York State Assembly. My duties require that I be present in the City of Albany, State of New York, on Monday and Tuesday, January 30 and 31st 1967. For that reason I will be unable to be in attendance at the Supreme Court, State of New York, Criminal Term on January 30th 1967 for the above entitled motion.

3. I have previously been engaged to represent 22 defendants in the case of People v Lucy Flynn et al in the Criminal Court of the City of New York, County of New York, Part 2A, on Wednesday February 1st, 1967 and will therefore be unable to appear before this Court on February 1st.

WHEREFORE,I respectfully request that the above entitled motion

be adjourned to Friday February 3rd,

Stephen M. Nagler, Esq.

Sworn to before me this
26th day of January 1967

CARL RACHLIN
Notary Public, State of New York
No. 24-3192200
Qualified in Kings County
Certs. filed with Kings & N.Y.Co. Clks.
Term Expires March 30, 1967

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS CRIMINAL TERM

.....

PEOPLE OF THE STATE OF NEW YORK,

Plaintiff,

- against -

County Clerk
Index #
5537-'65

THE STUYVESANT INSURANCE COMPANY

- for -

ALBERT ADKINS,

Principal.

.....

SIR:

PLEASE TAKE NOTICE that upon the annexed affidavit of STEPHEN M. NAGLER, ESQ. duly sworn to the 22nd day of December, 1965, THAT the undersigned will move this court at Criminal Term, Part 1, of this Court, at the Courthouse, in the Supreme Court Building, 125-01 Queens Blvd. Kew Gardens, Queens, New York, on the 29th day of December 1965, at ten o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for an order rescinding the forefeiture of bail and vacating and setting aside a judgment in the amount of $500, resulting from bail forfeiture entered in office of the Clerk of Queens County on the 30th day of June, 1965, against THE STUYVESANT INSURANCE COMPANY, as Surety for ALBERT ADKINS, Principal, and for such other and further relief as to the Court may seem just and proper.

Dated, Queens County, New York
December 22, 1965

Yours, Etc.

STEPHEN M. NAGLER
Attorney for Surety
Office & P. O. Address
c/o CORE
38 Park Row
New York, New York 10038

TO: Frank D. O'Connor, Esq.
District Attorney,
Queens County
126-05 Hoover Ave.
Kew Gardens, Queens
New York

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS CRIMINAL TERM

.....

THE PEOPLE OF THE STATE OF NEW YORK,

Plaintiff

- against -

THE STUYVESANT INSURANCE COMPANY,

Surety,

- for -

ALBERT ADKINS,

Principal.

.....

STATE OF NEW YORK
COUNTY OF QUEENS ss;

STEPHEN M. NAGLER, being duly sworn deposes and says, THAT I am the agent for The Stuyvesant Insurance Company, the surety herein, and as such agent am fully familiar with the facts herein.

THAT heretofore, and on the 23rd day of April, 1964 The Stuyvesant Insurance Company entered into a recognizance in the sum of FIVE HUNDRED (500) DOLLARS, wherein ALBERT ADKINS was the principal, and The Stuyvesant Insurance Company was the surety, in favor of the People of The State of New York, for the appearance of said principal to answer a charge of violation of §§2036 of The Penal Law.

THAT thereafter, on the 14th day of May, 1965, the case was called in The Criminal Court, held in and for the county of Queens, and the said principal not appearing the said recognizance was forfeited.

THAT the principal's failure to appear at the court appointed time was neither wilfull nor deliberate and the people have not lost any rights as a result of the non-appearance.

THAT the case was removed to the United States District Court for the Eastern District of New York during mid-1964 and was not remanded until shortly before it was placed on the Calender of the Criminal Court of the City of New York, County of Queens.

THAT ALBERT ADKINS had changed his address after the case was removed to the District Court but

prior to the time that the case was remanded, and he was not informed and on information and belief, was not aware that his presence was required in the Criminal Court on the 14th of May, 1965, the date on which his bail was forfeited.

THAT it is readily apparent that the principal's absence at the appointed time has been adequately explained and by virtue of the special circumstances existing herein, a granting of the relief sought is fully warranted.

THAT not more than one year has elapsed since the forfeiture was declared.

THAT no previous application for the relief prayed for herein has been made.

Wherefore, deponent respectfully prays that an order be entered in the above entitled action releasing The Stuyvesant Insurance Company from all its obligations under the bail bond in connection with the charge of Penal Law §2036 against the said principal and that this court remit the forfeiture of the undertaking filed by the said company, and vacating and setting aside and discharging the judgment in the sum of FIVE HUNDRED (500) DOLLARS, in the office of the Clerk of Queens County, entered on the 30th day of June, 1965, in favor of The People of The State of New York, against The Stuyvesant Insurance Company, as Surety and ALBERT ADKINS as principal, upon receipt by him of the order of the court, and for such other and further relief as to the court may seem just and proper in the premises.

DISTRICT ATTORNEY QUEENS COUNTY
DEC 23 AM 11:45
RECEIVED

Stephen M. Mayler

Sworn to before me
this 22nd day of December 1965.

Sidney Henkin

SIDNEY HENKIN
NOTARY PUBLIC, STATE OF NEW YORK
No. 41-1758450
Qualified in Queens County
Term Expires March 30, 1967

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS CRIMINAL TERM
.....

PEOPLE OF THE STATE OF NEW YORK

Plaintiff,

-against-

THE STUYVESANT INSURANCE COMPANY

Surety,

County Clerk
Index # 5531-'65

-for-

HENRY DOCTOR,

Principal.

.....

SIR:

PLEASE TAKE NOTICE that upon the annexed affidavit of STEPHEN M. NAGLER, ESQ., duly sworn to the 22nd day December, 1965, THAT the undersigned will move this Court at Criminal Term, Part 1, of this Court, at the Courthouse, in the Supreme Court Building, 125-01 Queens Blvd., Kew Gardens, Queens, New York, on the 29th day of December, 1965, at ten o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for an order rescinding the forfeiture of bail and vacating and setting aside a judgment in the amount of $500, resulting from bail forfeiture entered in office of the Clerk of Queens County on the 30th day of June, 1965 against THE STUYVESANT INSURANCE COMPANY, as Surety for HENRY DOCTOR, Principal, and for such other and further relief as to the Court may seem just and proper.

Dated, Queens County, New York
December 22nd, 1965

Yours, Etc.

STEPHEN M. NAGLER
Attorney for Surety
Office & P. O. Address
c/o CORE
38 Park Row
New York, New York 10038

TO: Frank D. O'Connor, Esq.
District Attorney,
Queens County
126-05 Hoover Avenue
Kew Gardens, Queens
New York

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS CRIMINAL TERM

.....

THE PEOPLE OF THE STATE OF NEW YORK

Plaintiff

-against-

THE STUYVESANT INSURANCE COMPANY

Surety,

- for -

HENRY DOCTOR,

Principal.

.....

STATE OF NEW YORK ss;
COUNTY OF QUEENS

STEPHEN M. NAGLER, being duly sworn deposes and says, THAT I am the agent for The Stuyvesant Insurance Company, the surety herein, and as such agent am fully familiar with the facts herein.

THAT heretofore, and on the 22nd day of April, 1964, The Stuyvesant Insurance Company entered into a recognizance in the sum of FIVE HUNDRED (500) DOLLARS, wherein HENRY DOCTOR was the principal, and The Stuyvesant Insurance Company was the surety, in favor of The People of The State of New York, for the appearance of said principal to answer a charge of violation of §1851 of the Penal Law.

THAT thereafter, on the 27th day of April, 1965 the case was called in The Criminal Court, held in and for the county of Queens, and the said principal not appearing the said recognizance was forfeited.

THAT the principal's failure to appear at the court appointed time was neither wilfull nor deliberate and the people have not lost any rights as a result of the non-appearance.

THAT the case was removed to the United States District Court for the Eastern District of New York during mid-1964 and was not remanded until shortly before it was placed on the Calender of the Criminal Court of the City of New York County of Queens.

THAT HENRY DOCTOR had changed his address after the case was removed to the District Court but prior to the time that the case was remanded to the Criminal

Court, and he was not informed and on information and belief, was not aware that his presence was required in the Criminal Court on the 27th day of April, the date on which his bail was forfeited.

THAT it is readily apparent that the principal's absence at the appointed time has been adequately explained and by virtue of the special circumstances existing herein,,a granting of the relief sought is fully warranted.

THAT not more than one year has elapsed since the forfeiture was declared.

THAT no previous application for the relief prayed for herein has been made.

Wherefore, deponent respectfully prays that an order be entered in the above entitled action releasing The Stuyvesant Insurance Company from all its obligations under the bail bond in connection with the charge of §1851, Penal Law, against the said principal and that this court remit the forfeiture of the undertaking filed by the said company, and vacating and setting aside and discharging the judgment in the sum of FIVE HUNDRED (500) DOLLARS, in the office of the Clerk of Queens County, entered on the 30th day of June, 1965, in favor of The People of The State of New York, against The Stuyvesant Insurance Company, as surety and HENRY DOCTOR as principal, upon receipt by him of the order of the court, and for such other and further relief as to the court may seem just and proper in the premises.

RECEIVED
DEC 23 AM 11:41
QUEENS COUNTY
DISTRICT ATTORNEY'S

Stephen M. Hayden

Sworn to before me
this 12 day of December 1965.

Sidney Henkin

SIDNEY HENKIN
NOTARY PUBLIC, STATE OF NEW YORK
No. 41-1758450
Qualified in Queens County
Term Expires March 30, 1967

At a Motion Term of the Supreme Court held in and for the County of New York at the 100 Centre St. Courthouse County of the City of New York, State of New York, on the ---- day of SEPT. 1967.

PRESENT; Hon. Frederick Backer
Justice, Supreme Court

County Clerk

Index # 16614-65

People of the State of New York,

-against-

Stuyvesant Insurance Company,
Surety,

-for-

Elaine Bibuld,

Principal.

Stuyvesant Insurance Company, the surety above named having moved this Court for an order vacating the forfeiture of the undertaking executed by Elaine Bibuild as principal and said Stuyvesant Insurance Company, as surety entered in the Office of the Clerk of New York County on the 19th day of November, 1964, and said motion having duly come on to be heard.

Now on reading and filing the notice of motion herein dated the 26th day of October 1965, together with proof of due service thereof, the affidavit of Stephen N. Nagler duly sworn to the 26th day of October, 1965, the affidavit of CARL RACHLIN duly sworn to the 27th day of October, 1965, and the affidavit of John E. Silverberg, Esq., sworn to July 18, 1967, with exhibit annexed showing that the People of the State of New York have lost no rights and that the Principal's failure to appear was justified and after hearing Stephen M. Nagler, attorney for the above named surety in favor of said motion and Hon. Frank Hogan, Esq., District Attorney of New York County appearing in opposition* and due deliberation having been had thereon, it is, on motion of Stephen M. Nagler, attorney for the surety,

ORDERED that the said motion be and the same hereby is granted, and it is further

ORDERED that the forfeiture of the undertaking of bail heretofor executed by Elaine Bibuld as principal and Stuyvesant Insurance Company as

*and upon reading the affidavits of EDWIN W. KAPUSTA dated July 13TH and July 20TH, 1967 in opposition, with exhibits attached thereto,

SCCQ-1002—8-63 — 135

SUPREME COURT, QUEENS COUNTY
WED:ah CRIMINAL TERM, PART I

THE PEOPLE OF THE STATE OF NEW YORK

--against--

RONALD COY, Principal

THE STUYVESANT INS. CO., ~~Defendant~~ Surety

BY JOSEPH M. CONROY, J.

DATED September 30, 196 5

~~Ind. No.~~ S.P. No. 705

Upon payment of TEN ($10.00) Dollars costs by the moving party to the District Attorney of Queens County, this motion is granted. Submit order.

The clerk of the Court is directed to mail a copy of the decision to the attorney for the surety.

JOSEPH M. CONROY
J.S.C.

SCCQ-1002—8-63 — 135

SUPREME COURT, QUEENS COUNTY
WED:ah CRIMINAL TERM, PART I

THE PEOPLE OF THE STATE OF NEW YORK

--against--

RONALD COY, Principal

V. COLEMAN, ~~Defendant~~ Surety.

BY JOSEPH M. CONROY, J.

DATED September 30, 196 5

~~Ind. No.~~ S.P. No. 706

Upon payment of TEN ($10.00) Dollars costs by the moving party to the District Attorney of Queens County, this motion is granted. Submit order.

The clerk of the Court is directed to mail a copy of the decision to the attorney for the surety.

JOSEPH M. CONROY
J.S.C.

May 5, 1965

Director
Otisville State Training School
Otisville, New York

Dear Sir:

I understand that a young man named Paul Davis was in attendance at the Otisville State Training School on June 18, 1964. On that date his attendance was required in Criminal Court, County of Queens. Because he failed to appear bail in his case was forfeited. We are now attempting to have the bail forfeiture remitted. A letter to the effect that Mr. Davis was in attendance at Otisville on June 18, 1964 would be most helpful to us. Many thanks in advance for your prompt attention.

Very truly yours,

SMN/cs

Stephen M. Nagler

AREA CODE 914 FULTON 6-4901
TEL.: MIDDLETOWN FULTON 6-2481
FULTON 6-4171
FULTON 6-2401

STATE OF NEW YORK
DEPARTMENT OF SOCIAL WELFARE

OTISVILLE STATE TRAINING SCHOOL FOR BOYS

OTISVILLE, NEW YORK 10963

BENJAMIN J. HILL, ED. D.
SUPERINTENDENT

NORMAN R. CATLETT
ASSISTANT SUPERINTENDENT

MAURICE WEINER
BUSINESS MANAGER

May 7, 1965.

Reference: Your letter of 5/5/65

Mr. Stephen M. Nagler,
Attorney at Law,
40 East 49th Street,
New York, N. Y. 10017 c/o George Schiffer,
Attorney at Law.

Dear Mr. Nagler:

A search of our records indicates that Paul Davis was in attendance at the Otisville State Training School for Boys, Otisville, New York, on June 18, 1964.

Very truly yours,

/s/ Benj. Hill

Benjamin J. Hill,
Superintendent.

BJH:EDW

cc: Social Service
H.S.B.

May 13, 1965

Mr. Edward Roberts
511 "M" Street
Washington, D. C.

Dear Mr. Roberts:

The District Attorney of Queens County has finally consented to dismiss all charges against persons arrested at the Florida Pavilion of the New York World's Fair in 1964. CORE has agreed to submit releases signed by all the defendants. I have therefore enclosed three releases which should be brought before a Notary Public and signed as soon as possible. It is urgent that you return these to me almost at once. It will also be necessary for you to appear in the Criminal Court of Queens County on June 1, 1965 when the charges against you will be dropped. Please keep in touch with me between now and June 1.

Very truly yours,

SMN/cs
Enc.

STEPHEN M. NAGLER

May 13, 1965

Mr. Lannorres Hobbs
1071 Sutter Avenue
Brooklyn, New York

Dear Mr. Hobbs:

The District Attorney of Queens County has finally been convinced to dismiss all charges against the CORE people who were arrested at the New York World's Fair Florida Pavilion in 1964. CORE in turn has agreed to submit releases signed by all defendants. I have therefore enclosed three releases which I hope you will take before a Notary Public and sign at your earliest possible convenience. It is urgent that you return them to me <u>at once</u>. It will also be necessary for you to appear at the Criminal Court of Queens County on June 1, 1965 when the charges against you will be dismissed. Please keep in touch with me between now and June 1.

Very truly yours,

SMN/cs
Enc.

STEPHEN M. NAGLER

May 13, 1965

Loucille Plummer
177 Palma Street
St. Augustine, Florida

Dear Miss Plummer:

The District Attorney of Queens County has finally consented to dismiss all charges against persons arrested at the Florida Pavilion of the New York World's Fair in 1964. CORE in turn has agreed to submit releases signed by all of these defendants. I have therefore enclosed three releases which are to be brought by you before a Notary Public and signed at your earliest possible convenience. It is urgent that you return these to me signed at once. It will also be necessary for you to be in New York on June 1, 1965 when the cases will be dismissed in the Criminal Court of Queens County. Please keep in touch with me between now and June 1.

Very truly yours,

SMN/cs
Enc.

STEPHEN M. NAGLER

May 13, 1965

Phyllis Corbett
69 Pinehurst Ave.
New York, New York

Dear Phyllis:

The District Attorney of Queens County has finally agreed to dismiss the cases arising from the arrests at the Florida Pavilion of the New York World's Fair last year. In exchange CORE has agreed to submit releases signed by each defendant. Please execute the three releases which I have enclosed <u>at once</u> before a Notary Public. It will also be necessary for you to appear in the Criminal Court of Queens County on June 1, 1965 when your case will be dismissed.

Very truly yours,

SMN/cs
Enc.

STEPHEN M. NAGLER

May 18, 1965

Mr. Jimmie Clark
109-76 142 Street
Jamaica, New York

Dear Mr. Clark:

The cases arising out of the demonstrations at the Florida Pavilion at the New York World's Fair are finally going to be disposed of on June 1. The District Attorney has agreed to dismiss all of them. We have agreed in exchange to give him releases signed by all defendants. As soon as possible please take the ones which I have enclosed before a Notary Public and have them executed. It is urgent that you do this at once. I am afraid that it will also be necessary for you to appear in court (Criminal Court of Queens County, 125-01 Queens Blvd.) on the first of June when the cases are to be dismissed.

Very truly yours,

SMN/cs

STEPHEN M. NAGLER

May 13, 1965

Mr.Bernal Gripper
310 "N" Street, N.W.
Washington, D. C.

Dear Mr. Gripper:

The District Attorney of Queens County has finally been convinced to dismiss all charges against persons arrested at the Florida Pavilion of the New York World's Fair of 1964. In turn CORE has agreed to submit releases signed by each of the defendants in each of these cases. I am therefore enclosing three releases which I hope you will execute before a Notary Public and return to me at once. It will also be necessary for you to appear in the Criminal Court of Queens County on June 1, 1965 when the charges against you will be dismissed. Please keep in touch with me between now and June 1.

Very truly yours,

SMN/cs
Enc.

STEPHEN M. NAGLER

May 13, 1965

Mr. Eugune Tournour
5700 W. Minister
St. Louis, Missouri

Dear Mr. Tournour:

A determination has finally been reached as to what to do with the cases of those persons arrested at the New York State Pavilion of the New York World's Fair in 1964. The cases will all be dismissed on June 1. It will, unfortunately, be necessary for you to be present at that time. Before then, however, we must have a release signed by you. Please take the three releases enclosed before a Notary Public and sign them in his presence. Then send them back to me <u>without delay</u>.

Very truly yours,

SMN/cs

Stephen M. Nagler

May 13, 1965

Mr. Lauren Jenkins
434 Riversville Road
Greenwich, Conn.

Dear Mr. Jenkins:

The District Attorney of Queens County has finally been convinced to dismiss charges against all those arrested at the Florida Pavilion of the New York World's Fair, in 1964. CORE has in turn agreed to supply releases signed by all defendants as soon as possible. Therefore, I have enclosed three releases which I hope you will bring before a Notary Pubjic and execute at once. It will also be necessary for you to appear in the Criminal Court of Queens County on June 1, 1965. It is important that you keep in touch with me between now and June 1.

Thank you very much for your attention.

Very sincerely yours,

SMN/cs
Enc.

Stephen M. Nagler

May 13, 1965

Mr. James Jenkins
210 Congress St.
Brooklyn, N.Y.

Dear Mr. Jenkins:

The District Attorney of Queens County has finally been compelled to drop all charges against persons arrested at the Florida Pavilion of the New York World's Fair of 1964. On our side, CORE has agreed to obtain releases signed by all of the defendants. Therefore please return the three enclosed releases signed before a notary public as soon as possible. It will also be necessary for you to appear on June 1, 1965 at the Criminal Court of Queens County, 125-01 Queens Boulevard, when the charges will be dismissed.

Please keep in touch with me until then.

Very truly yours,

RMK/jw
Encl.

Mr. Eric Eisenberg
387 E. Mosholu Parkway
Bronx, New York

Dear Eric:

Although you signed the releases, you failed to have them notarized. As it is necessary for you to be present before the notary to acknowledge your signature, I am sending the releases back to you. Please attend to this as soon as possible. Also please do not forget the June 1st date at Queens College Queens.

Arrested with you at the New York State Pavilion was Moody Myrin, who's last address which we have for him is 24 Winnisaic Drive, Secaucus. Do you know anything about him? In particular, where he is. If so, please let us know at once.

Very truly yours,

SMM/bw

SAMUEL M. KAGAN

May 18, 1965

Mr. Albert Adkins
739 Gates Avenue
Brooklyn, New York

Dear Mr. Adkins:

I have been trying to get in touch with you for two or three weeks now in conjunction with the charges against you arising out of the demonstrations at the New York World's Fair in 1964. The District Attorney has agreed to dismiss all charges against defendants who appear in the Criminal Court of Queens County. In fact, charges against Lane Perdu and Marshall Brown, two people who were arrested with you were dismissed on May 14. If you had appeared at that time the charges against you would also have been dismissed. But, because you failed to appear the Judge issued a warrant for your arrest. If you will get in touch with me at once I will arrange to have the warrant stopped and the charges against you dismissed. CORE has agreed to obtain releases signed by all defendants in exchange for dismissal of the charges. Please, therefore, sign the three enclosed releases before a Notary Public of the State of New York and return them to me <u>at once</u>. When you have done this I will arrange to have the warrant revoked and your cases dismissed. If you fail to do this, you will probably be arrested and held in jail for a day or two. Then you will come to trial on the charges which may not be dismissed.

Cont'd....

The District Attorney has also agreed to dismiss charges against Henry Doktor if he signs releases. Can you help us find him? At any rate, please get in touch with me at PL 2-8060 as soon as possible.

Very truly yours,

SMN/cs
Encs.

STEPHEN M. NAGLER

June 3, 1965

Albert Adkins, Jr.
173 Hall Street
Brooklyn, New York

Dear Mr. Adkins:

There are now warrants out for your arrest as well as for the arrest of Henry Doctor. I cannot emphasize sufficiently how important it is that both of you contact me at once. If you do so I will see to it that the warrants for your arrests are cancelled and withdrawn. In order to do this I must have the enclosed releases signed before a Notary Public and returned to me as soon as possible.

If you are afraid to contact me in person at least sign the releases and have Henry Doctor do likewise, and mail them back to me. If I have these releases I may be able to have the charges dismissed and the warrant withdrawn without requiring you to appear in court.

Please attend to this at once. It is important not only to your future and freedom but also to CORE.

Very truly yours,

Stephen M. Nagler

SMN:bb
enc.

June 3, 1965

Mr. Marshall Brown
8400 Ravine Avenue
Yonkers, New York

Dear Marshall:

Justice triumphs, the cases are dismissed. You are a free man.

Here are the transcripts of the records which you required. Jim Mahorner of the Florida Attorney General's Office says that he is willing to give you a character reference if you want it (don't laugh), he's serious. If you need any help on this matter please get in touch with me.

Best of luck.

Sincerely,

Stephen M. Nagler

SMN:bb
enc.

June 3, 1965

Eugene Tournour
204 W. North Avenue
Chicago, Illinois

Dear Mr. Tournour:

Congratulations! You are a free man. The charges against you were dismissed on June 1, 1965 and bail was reinstated.

Best of luck.

Very truly yours,

Stephen M. Nagler

SMN:bb

June 3, 1965

Patricia Due
540½ West Brevard Street
Tallahassee, Florida

Dear Pat:

Matters have cleared up completely in your case but problems still exist in the cases of Bill Brown and Frank Robinson. It is particularly important that we find Frank Robinson as soon as possible. It will be unnecessary for him to come to New York if he executes the releases at once and mails them back to me. This applies to Bill Brown too. Whatever you can do to help in finding them will be greatly appreciated.

Very truly yours,

Stephen M. Nagler

SMN:bb

P. S. It is necessary that the notary's signature be accompanied by a certificate stating the source of authority of the notary. I'm sure that John will know all about this.

August 31, 1965

Hon. Leonard E. Reisman, Esq.
Deputy Commissioner in Charge of Legal
Matters
New York City Police Department
240 Centre Street
New York, New York 10013

Dear Commissioner Reisman:

Please forgive my delay in not writing to you sooner. As I stated to you several weeks ago, CORE is interested in opening new channels of communication with the Police Department.

We attempt to examine complaints of police brutality objectively, if not critically. Many are rejected out of hand as having no merit. In the few cases in which we attempt an investigation, we consistently endeavor to be thorough and objective. Our prime difficulty in these cases is that we do not have access to the police officer concerned, and we must therefore make a determination as to what steps should be taken without having heard his "side of the story".

Very probably, discussions of the circumstances of many cases with the concerned officers would relieve them of the burden of public charges of wrong doing, unfavourable publicity, and it could do much toward improving attitudes on all fronts.

In short, then, what we ask is the opportunity in a few cases to interview (under such circumstances as will protect the officer, yet allow for a reasonable number of questions to be asked), police officers

Cont'd...

charged with brutality. Having suggested the basic approach, I leave it to you to determine such means and conditions as will both protect the officer and allow for a reasonable examination by you and us of such situations.

In any event, I am looking forward to further discussing the subject with you as soon as possible.

Very truly yours,

Stephen M. Nagler

SMN/cs

STEPHEN M. NAGLER

a national organization with affiliated local groups working

CONGRESS OF RACIAL EQUALITY
CORE

to abolish racial discrimination by direct, nonviolent methods

38 PARK ROW
NEW YORK 38, NEW YORK
COrtlandt 7-6270

James Farmer
national director
Dr. George A. Wiley
associate national director

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James Baldwin
Roger N. Baldwin
Katrina M. Barnes
Algernon D. Black
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Lillian Smith
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STAFF

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director of organization
Richard Haley
southern regional director
Carl Rachlin, Esq.
general counsel
Alan Gartner
fund raising director
James Peck
CORElator editor

December 10, 1965

Lanorres Hobbs
1071 Sutter Avenue
Brooklyn, New York

Dear Lanorres:

The District Attorney of Queens County has finally decided to move to dismiss all charges in the remaining cases arising out of the April, 1964 CORE World's Fair demonstrations. The big day will be Thursday, December 16th.

It will be necessary for you to appear along with all other Florida and United States Pavilion defendants at that time. If it is impossible for you to be present, please call me.

In any case, please sign the enclosed releases before a Notary Public and return them to me at once. I am looking forward to seeing you on Thursday.

Yours for Freedom,

Stephen M. Nagler DF
Stephen M. Nagler
Associate to the
General Counsel

SMN:DF
Enc. 3

TO ALL TO WHOM THESE PRESENTS SHALL COME OR
MAY CONCERN

GREETING: KNOW YE, That

LANORRES HOBBS

hereinafter known as the party of the First Part for and in consideration of the sum of One Dollar ($1.00) lawful money of the United States of America to myself in hand paid by the World's Fair 1964-65 Corporation, Pinkerton's National Detective Agency, Inc., World's Fair Police Department; the City of New York; Police Department of the City of New York; the Department of Parks of the City of New York; the Port of New York Authority;

..., any and all of the officers, directors and employees of any of the foregoing and any and all members of the World's Fair Police Department:

hereinafter known as parties of the second part, the receipt whereof is hereby acknowledged, have remised, released, and forever discharged and by these presents do for my heirs, executors, and administrators and assigns, remise, release and forever discharge the said parties of the second part their heirs, executors, administrators, successors and assigns of and from all, and all manner of action and actions cause and causes of action, suits, debts, dues, sums of money, accounts, reckoning, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands whatsoever, in law, in admiralty, or in equity, which against said parties of the second part, I ever had, nor have or which I or my heirs, executors, or administrators hereafter can, shall or may have for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of these presents.

This release may not be changed orally.

IN WITNESS WHEREOF, have hereunto set hand and seal the day of in the year one thousand nine hundred and

Sealed and delivered in the presence of

X _____

STATE OF NEW YORK)
: ss.:
COUNTY OF QUEENS)

On the day of 19 before me came

to me known and known to me to be the individual described in and who executed the foregoing instrument and acknowledged to me that executed the same.

_____

a national organization with affiliated local groups working

CONGRESS OF CORE RACIAL EQUALITY

to abolish racial discrimination by direct, nonviolent methods

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NEW YORK 38, NEW YORK
COrtlandt 7-6270

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Roland B. Gittelsohn
Sidney Hollander
George M. Houser
E. Stanley Jones
Bishop F. D. Jordan
Martin Luther King
Douglas Levin
David Livingston
Will Maslow
A. J. Muste
Dorothy Norman
A. Philip Randolph
Ira DeA. Reid
Walter P. Reuther
Hodson R. Reynolds
Jackie Robinson
Arnold M. Rose
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southern regional director
Carl Rachlin, Esq.
general counsel
Alan Gartner
fund raising director
James Peck
CORElator editor

December 10, 1965

Henry Doctor
c/o Adkins
739 Gates Avenue
Brooklyn, New York

Dear Henry:

The District Attorney of Queens County has finally decided to move to dismiss all charges in the remaining cases arising out of the April, 1964 CORE World's Fair demonstrations. The big day will be Thursday, December 16th.

It will be necessary for you to appear along with all other Florida and United States Pavilion defendants at that time. If it is impossible for you to be present, please call me.

In any case, please sign the enclosed releases before a Notary Public and return them to me at once. I am looking forward to seeing you on Thursday.

Yours for Freedom,

Stephen M. Nagler
Associate to the
General Counsel

SMN:DF
Enc. 3

This send Steve Nagler at Columbia cy of ~~last call~~

LAW OFFICES
COWAN, LIEBOWITZ & LATMAN
200 EAST 42ND STREET
NEW YORK, N. Y. 10017

MEMORANDUM

From Louise

To Alan Latman Dated 2/17/66

Subject

TELEPHONE CALL FROM PEARLBERGER - 1:00 P.M.

He is leaving the office immediately for trip to Europe. Will not return until March 9th.

The appeals will have to be held over and request for an extension of time from one to two months.

Someone will have to appear at the Appellate Term in Brooklyn on the first Monday of March and request a further extension.

He tried to get this out before he left - but he was unable to do so with all the other work piled up. He wants you to know that it was not deliberate.

DEC 15 1965

141-19 71 Road
Flushing, N.Y. 11367
Dec. 13, 1965

Dear Mr. Nagler,

As you know Steven Potois is at Antioch and because of final exams cannot be back in N.Y. until Dec. 20, I have signed the enclosed releases as his mother and guardian. I hope they will be satisfactory.

Thank you very much for your trouble.

Sincerely,

Ruth Peters Bronheim

LAW OFFICES
COWAN, LIEBOWITZ & LATMAN
200 EAST 42ND STREET
NEW YORK, N.Y. 10017

MARVIN S. COWAN
SIDNEY I. LIEBOWITZ
ALAN LATMAN
LEWIS R. COWAN

SANFORD I. RUDEN
HARRY F. GOLDBERG

AREA CODE 212
YUKON 6-6272

CABLE ADDRESS:
COWLIELAT, N.Y.

MAR 1 1966

February 28, 1966

Steven Nagler, Esq.
Congress of Racial Equality
38 Park Row
New York, New York

Dear Steve:

Enclosed is some background material which might be of assistance in your making the application at the appropriate calendar call at Appellate Term, Second Department, for a further extension.

Please let me know if you have any problem and, in any event, advise me of the outcome.

Sincerely yours,

Alan

Alan Latman

AL:ca
encl.
cc: Ralph Perlberger, Esq.

Epstein

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE TERM: SECOND DEPARTMENT

----------X

PEOPLE OF THE STATE OF NEW YORK, :

Respondent, : N-1297

-against- : AFFIRMATION

FRANKLIN ANDERSON, :

Defendant-Appellant. :

----------X

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

The undersigned attorney at law of the State of New York affirms:

I am an attorney for the above-named defendant-appellant.

The judgment of the Criminal Court of the City of New York, from which case an appeal is being taken, imposed a fine which was paid.

No certificate of reasonable doubt was applied for, or granted herein. A notice of appeal was filed on October 15, 1964.

The undersigned is co-counsel in this appeal with Ralph Perlberger, Esq., of 15 Park Row, New York, New York.

The offices of Mr. Perlberger and the undersigned have been collaborating on this appeal, as well as People v. Epstein, No. N-1350, People v. Epstein, No. N-1424, and People v. Kalimtgis, No. N-1264. These four cases arise out of a common factual situation, namely, the civil rights demonstrations at the United States Pavilion of the New York World's Fair on April 22, 1964.

The instant appeal was, after stipulation, noticed for the February 1965 term of this Court. Extensions were secured in the other three above-mentioned cases so as to notice them for the January 1966 term. Because of inadvertence, partially as a result of the necessity of coordination between the two law offices involved, an extension of the time to perfect the instant appeal was not secured. Since these three cases presented common issues of law and arose out of similar factual situations, it is believed that consolidation of the appeals, or at least of the arguments thereon, will be in the best interest of justice and effective judicial administration.

The undersigned verily believes that this appeal is meritorious. Moreover, earlier delays, occasioned by the absence of a stenographic transcript of the related appeals, have now ended and the undersigned verily believes that the

instant appeal will be perfected for the January 1966 term.

In view of the foregoing, the undersigned respectfully requests that the relief applied for be in all respects granted and that the instant appeal be restored to the calendar for the January 1966 term.

Dated: October 26, 1965

ALAN LATMAN

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS CRIMINAL TERM
.....

PEOPLE OF THE STATE OF NEW YORK,

Plaintiff,

- against -

County Clerk
Index #
5532-'65

THE STUYVESANT INSURANCE COMPANY,

- for -

HENRY DOCTOR,

Principal.

.....

SIR:

PLEASE TAKE NOTICE that upon the annexed affidavit of STEPHEN M. NAGLER, ESQ., duly sworn to the 22nd day of December, 1965, THAT the undersigned will move this Court at Criminal Term, Part 1, of this Court, at the Courthouse, in the Supreme Court Building, 125-01 Queens Blvd., Kew Gardens, Queens, New York, on the 29th day of December, 1965, at ten o'clock on the forenoon of that day or as soon thereafter as counsel can be heard for an order rescinding the forfeiture of bail and vacating and setting aside a judgment in the amount of $500, resulting from bail forfeiture entered in office of the Clerk of Queens County on the 30th day of June, 1965, against THE STUYVESANT INSURANCE COMPANY, as Surety for HENRY DOCTOR, Principal, and for such other and further relief as to the Court may seem just and proper.

Dated, Queens County, New York.
December 22, 1965

Yours, Etc.

STEPHEN M. NAGLER, ESQ.
Attorney for Surety
Office & P. O. Address
c/o CORE
38 Park Row
New York, New York

TO: Frank D. O'Connor, Esq.
District Attorney,
Queens County
126-05 Hoover Avenue
Kew Gardens, Queens
New York

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS CRIMINAL TERM

THE PEOPLE OF THE STATE OF NEW YORK,

Plaintiff,

-against-

THEYSTUYVESANT INSURANCE COMPANY,

Surety,

-for-

HENRY DOCTOR,

Principal.

STATE OF NEW YORK
COUNTY OF QUEENS ss;

STEPHEN M. NAGLER, being duly sworn deposes and says, THAT I am the agent for The Stuyvesant Insurance Company, the surety herein, and as such agent am fully familiar with the facts herein.

THAT heretofore, and on the 23rd day of April 1964, The Stuyvesant Insurance Company entered into a recognizance in the sum of FIVE HUNDRED (500) DOLLARS, wherein HENRY DOCTOR was the principal, and The Stuyvesant Insurance Company was the surety, in favor of The People of The State of New York, for the appearance of said principal to answer a charge of violation of §§2036 of the Penal Law.

THAT thereafter, on the 27th day of April, 1965, the case was called in The Criminal Court, held in and for the county of Queens, and the said principal not appearing the said recognizance was forfeited.

THAT the principal's failure to appear at the court appointed time was neither wilfull nor deliberate and the people have not lost any rights as a result of the non-appearance.

THAT the case was removed to the United States District Court for the Eastern District of New York during mid-1964 and was not remanded until shortly before it was placed on the Calender of the Criminal Court of the City of New York, County of Queens.

THAT Henry Doctor had changed his address after the case was moved to the District Court but prior to the time that the case was remanded to the Criminal

Court, and he was not informed and, on information and belief, was not aware that his presence was required in the Criminal Court on the 27th day of April, the date on which his bail was forfeited.

THAT it is readily apparent that the principal's absence at the appointed time has been adequately explained and by virtue of the special circumstances existing herein, a granting of the relief sought is fully warranted.

THAT not more than one year has elapsed since the forfeiture was declared.

THAT no previous application for the relief prayed for herein has been made.

Wherefore, deponent respectfully prays that an order be entered in the above entitled action releasing The Stuyvesant Insurance Company from all its obligations under the bail bond in connection with the charge of §2036, Penal Law, against the said principal and that this court remit the forfeiture of the undertaking filed by the said company, and vacating and setting aside and discharging the judgment in the sum of FIVE HUNDRED (500) DOLLARS, in the office of the Clerk of Queens County, entered on the 30th day of June, 1965, in favor of The People of The State of New York, against The Stuyvesant Insurance Company, as surety and HENRY DOCTOR as principal, upon receipt by him of the order of the court, and for such other and further relief as to the court may seem just and proper in the premises.

Stephen M. Hazler

Sworn to before me
this 22 day of December 1965.

Sidney Henkin

SIDNEY HENKIN
NOTARY PUBLIC, STATE OF NEW YORK
No. 41-1758450
Qualified in Queens County
Term Expires March 30, 1967

RECEIVED
DEC 23 AM 11:41
QUEENS COUNTY DISTRICT ATTORNEY'S OFFICE

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK CRIMINAL TERM

.....X

THE PEOPLE OF THE STATE OF NEW YORK
Plaintiff,

-against-

THE STUYVESANT INSURANCE COMPANY
Surety,

-- for --

FRANCIS DEAVEAREZ (a/k/a, FRANCIS DEVEAUX)
Principal,

.....X

STATE OF NEW YORK ss:
COUNTY OF NEW YORK

STEPHEN M. NAGLER, being duly sworn deposes and says: 1. On March 10, 1966, I made an affadavit explaining the forfeiture of bail in the case of FRANCIS DEAVEAREZ (a/k/a) FRANCIS DEVEAUX, and the reasons why the forfeiture should be vacated. I reaffirmed all statements made at that time in the form in which they appeared.

2. In addition, I wish to state that FRANCIS DEAVEAREZ (a/k/a) FRANCIS DEVEAUX, returned to criminal court on April 9, 1965, on which date he was tried and found guilty of disorderly conduct. As proof thereof, a transcript of record is attached hereto and made a part hereof.

3. It is readily apparent that the principals' absence at the appointed time has in no way prejudiced the rights of the PEOPLE OF THE STATE OF NEW YORK.

4. Wherefore, deponent respectfully reiterates his prayer that forfeiture of bail in connection with t charge of section 722 of the Penal Law in the sum of $500.00 be remitted.

STEPHEN M. NAGLER

Sworn to before me on
this 28th day of March, 1966.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS CRMIMINAL TERM PART I.

COUNTY CLERK
INDEX 3900-'65

PEOPLE OF THE STATE OF NEW YORK
Plaintiff,

-against-

THE STUYBESANT INSURANCE COMPANY
Surety,

for

ROBERT DELAIN, Principal.

STATE OF NEW YORK
COUNTY OF NEW YORK ss:

STEPHEN M. NAGLER, being duly sworn deposes and says:

1. I reaffirmed all statements made in my previous affadavit dated March 15, 1966.

2. In my previous affadavit I stated that ROBERT DELAIN was on the date of the forefeiture a patient at Kings State Hospital - King Park, N.Y. As proof of that statement I annex hereto and make a part hereon a letter from the Associate Director of King Park State Hospital verifying that during the entire period surrounding the date of forfeiture, ROBERT DELAIN was a ~~x~~ patient.

3. I stated in my previous affadavit that the charges against ROBERT DELAIN were dismissed on June 3, 1965 in the Criminal Court of the city of New York, County of Kings. I attach hereto a certificexxxx of Disposition as proof of that statement.

STEPHEN M. NAGLER

Sworn to before me
this ------- 28th day of March 1966.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS CRIMINAL TERM

.....

PEOPLE OF THE STATE OF NEW YORK
Plaintiff,

-against-

THE STUYVESANT INSURANCE COMPANY

County Clerk
Index #372065

-for-

FRANCIS DEAVEAREZ (a/k/a, FRANCIS DEAVEAUX)

.....

SIR:

PLEASE TAKE NOTICE that upon the annexed affidavit of STEPHEN M. NAGLER, ESQ., duly sworn to the 10th day of March , 1966, THAT the undersigned will move this Court at Criminal Term, Part 1, of this Court, at the Courthouse, in the Supreme Court Building, Brooklyn Civic Center, Brooklyn, New York, on the 16th day of March, 1966, at ten o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for an order rescinding the forefeiture of bail and vacating and setting aside a judgment in the amount of $500, resulting from bail forfeiture entered in office of the Clerk of Kings County on the day of , 1965, against THE STUYVESANT INSURANCE COMPANY, as Surety for FRANCIS DEAVEAREZ, Principal, and for such other and further relief as to the Court may seem just andpproper.

Dated, New York, New York
March 10th, 1966

Yours, Etc.

STEPHEN M. NAGLER
Attorney for Surety
Office and Post Office Address
c/o C.O.R.E.

TO: Hon. Aaron Koota
District Attorney Kings County
Municipal Building
Brooklyn, New York

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK CRIMINAL TERM

.....X

THE PEOPLE OF THE STATE OF NEW YORK
Plaintiff,

-against-

THE STUYVESANT INSURANCE COMPANY
Surety,

-- for --

FRANCIS DEAVEAREZ (a/k/a, FRANCIS DEVEAUX)
Principal,

.....X

STATE OF NEW YORK
COUNTY OF NEW YORK ss;

STEPHEN M. NAGLER, being duly sworn deposes and says, THAT I am the agent for The Stuyvesant Insurance Company, the surety herein, and as such agent am fully familiar with the facts herein.

THAT heretofore, and on the 19th day of February, 1965, The Stuyvesant Insurance Company entered into a recognizance in the sum of FIVE HUNDRED (500) DOLLARS, wherein FRANCIS DEAVEAREZ was the principal, and The Stuyvesant Insurance Company was the surety, in favor of The People of The State of New York, for the appearance of said principal to answer a charge of violation of Penal Law Section 722.

THAT thereafter, on the 16th day of March, 1965, the case was called in The Criminal Court, held in and for the county of Kings, and the said principal not appearing the said recognizance was forfeited.

THAT the principal's failure to appear at the court appointed time was neither wilfull nor deliberate and the people have not lost any rights as a result of the non-appearance.

THAT, on information and belief, the reason for the said non-appearance of FRANCIS DEAVEAREZ on March 16th, 1965, was that he was confined to the Kings County Jail as a result of a conviction having no relation to the present case.

THAT FRANCIS DEAVEAREZ was unaware that he was required to appear in the Criminal Court in and for the County of Kings and in any event on information and belief was unable for the aforementioned reasons to appear on that date.

THAT it is readily apparent that the principal's absence at the appointed time has been adequately explained and by virtue of the special circumstances existing herein, a granting of the relief sought is fully warranted.

THAT not more than one year has elapsed since the forfeiture was declared.

THAT no previous application for the relief prayed for herein has been made.

Wherefore, deponent respectfully prays that an order be entered in the above entitled action releasing The Stuyvesant Insurance Company from all its obligations under the bail bond in connection with the charge of Penal Law Section 722 , against the said principal and that this court remit the forfeiture of the undertaking filed by the said company, and vacating and setting aside and discharging the judgment in the sum of FIVE HUNDRED ($500.00) DOLLARS, in the office of the Clerk of Kings County, entered on the day of 19 , in favor of The People of The State of New York, against The Stuyvesant Insurance Company, as surety and FRANCIS DEAVEAREZ as principal, upon receipt by him of the order of the court,

and for such other and further relief as to the court may seem just and proper in the premises.

Sworn to before me

this day of 19

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS CRIMINAL TERM

PEOPLE OF THE STATE OF NEW YORK,
Plaintiff,

-against-

THE STUYVESANT INSURANCE COMPANY

-for-

WALTER HARDY,
Principal.

COUNTY CLERK
Index #203-66

SIR:

PLEASE TAKE NOTICE that upon the annexed affidavit of STEPHEN M. NAGLER, ESQ., duly sworn to the 8th day of December, 1966, THAT the undersigned will move this Court at Criminal Term, Part 1, of this Court, at the Courthouse, in the Supreme Court Building, 125-01 Queens Blvd., Kew Gardens, Queens, New York, on the 21st day of December, 1966 at ten o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for an order rescinding the forfeiture of bail and vacating and setting aside a judgment in the amount of $500, resulting from bail forfeiture entered in office of the Clerk of Queens County on the 11th day of January, 1966, against THE STUYVESANT INSURANCE COMPANY, as Surety for WALTER HARDY, Principal, and for such other and further relief as to the Court may seem just and proper.

Dated, Queens County, New York

December 8, 1966.

Yours, etc.

STEPHEN M. NAGLER, Esq.
Attorney for Surety
Office and P.O. Address
150 Nassau Street, [illegible]
New York, N.Y. [illegible]

TO: Nat Hentel, Esq.
District Attorney, Queens County
126-05 Hoover Avenue
Kew Gardens, Queens
New York

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS CRIMINAL TERM

PEOPLE OF THE STATE OF NEW YORK
Plaintiff,

-against-

THE STUYVESANT INSURANCE COMPANY

-for-

WALTER HARDY,

Principal.

AFFIDAVIT
Index #203-66

STATE OF NEW YORK)
COUNTY OF QUEENS) ss:

STEPHEN M. NAGLER, being duly sworn, deposes and says, THAT I am the agent for The Stuyvesant Insurance Company, the surety herein, and as such agent am fully familiar with the facts herein.

THAT heretofore, and on the 22nd day of April, 1964, The Stuyvesant Insurance Company entered into a recognizance in the sum of FIVE HUNDRED ($500) DOLLARS, wherein, WALTER HARDY was the principal, and The Stuyvesant Insurance Company was the surety, in favor of the People of the State of New York, for the appearance of said principal to answer a charge of violation of Section 722 of the Penal Law.

THAT thereafter, on the 28th day of December, 1965, the case was called in the Criminal Court, held in and for the county of Queens, and the said principal not appearing the said recognizance was forfeited.

THAT the principal's failure to appear at the court appointed time was neither willfull nor deliberate and the people have not lost any rights as a result of the non-appearance.

THAT on the aforesaid 28th day of December, 1965, the defendant, WALTER HARDY, was unaware that he was required to appear in the Criminal Court because prior to that date his case, along with many others, had been removed to the United States District Court for the Eastern District of New York and had been removed completely from the calendar of the Criminal Court of the City of New York, which by virtue of the removal had lost jurisdiction over the defendant. The case remained in the federal courts for over a year before it was remanded to the Criminal Court by virtue of a decision of the Supreme Court of the United States (People v. Galemison, et al.). The restoration of the case to the calendar of the Criminal Court was not made known to the defendant on or before the 28th day of December, 1965.

THAT the charges against all of the co-defendants of WALTER HARDY who appea ed in the Criminal Court on that day or thereafter were dismissed on motion by the District Attorney and the District Attorney intends, on information and belief, to dismiss the charges against WALTER HARDY,

THAT it is readily apparent that the principal's absence at the appointed time has been adequately explained and by virtue of the special circumstances existing herein, a granting of the relief sought is fully warranted.

THAT not more than one year has elapsed since the forfeiture was declared.

THAT no previous application for the relief prayed for herein has been made.

Wherefore, deponent respectfully prays that an order be entered in the above entitled action releasing the Stuyvesant Insurance Company from all its obligations under the bail bond in connection with the charge of violation of Section 722 of the Penal Law against the said principal and that this court remit the forfeiture of the undertaking filed by the said company, and vacating and setting aside and discharging the judgment in the sum of FIVE HUNDRED (500) DOLLARS, in the office of the Clerk of Queens County, entered on the 11th day of January, 1966, in favor of the People of the State of New York, against the Stuyvesant Insurance Company, as surety and WALTER HARDY as principal, upon receipt by him of the order of the court, and for such other and further relief as to the court may seem just and proper in the premises.

STEPHEN M. NAGLER

Sworn to before me
this 8th day December, 1966.

At a Criminal Term of the Supreme Court held In and for the County of Queens at the Courthouse at 135-01 Queens Boulevard, County of Queens of the City of New York, Stateof New York, on the day 18th of April, 1967.

PRESENT: Hon. J. Irwin Shapiro,
Justice, Supreme Court

PEOPLE OF THE STATE OF NEW YORK

-against-

STUYVESANT INSURANCE COMPANY,
Surety.

COUNTY CLERK
INDEX #12819-64

-for-

FRANK ROBERSON,
Principal.

Stuyvesant Insurance Company, the surety above named having moved this Court for an order vacating the forfeiture of the undertaking executed by FRANK ROBERSON, as principal and said Stuyvesant Insurance Company, as surety entered in the Office of the Clerk of Queens County on the 25th day of November, 1964, and said motion having duly come on to be heard.

Now on reading and filing the notice of motion herein dated the 3rd day of May, 1965, together with proof of due service thereof, the affidavits of Stephen M. Nagler duly sworn to the 3rd day of May, 1965, and the 1st day of February, 1967, the affidavit of John E. Silverberg, duly sworn to the 1st day of February, 1967 and upon all of the other papers and proceedings had herein and after hearing Stephen M. Nagler, attorney for the above named surety in favor of such motion and due deliberation having been had thereon, and the District Attorney appearing and not opposing it is, on motion of Stephen M. Nagler, attorney for the surety,

ORDERED that the said motion be and the same hereby is granted, and it is further

ORDERED that the forfeiture of the undertaking of bail heretofore executed by FRANK ROBERSON as principal and Stuyvesant Insurance Company as surety, which said forfeiture was entered on the 11th day of August, 1964, be and the same hereby is in all respects vacated and set aside, and it is further

ORDERED that the judgment in the sum of five hundred ($500) dollars entered upon said undertaking so forfeited in the Office of the Clerk of the County of Queens on November 25, 1964, be and the same hereby is vacated and the Clerk of the County of Queens upon being served with a certified copy of this order is hereby directed to make a note of the vacation of said judgment on all indices and records of said judgment contained in his office referring to this order, and it is further

ORDERED that a copy of this order with notice of entry thereof be served on the District Attorney of Queens County with 10 days after entry thereof.

Enter

J.S.C.

Justice, Supreme Court

GRANTED
APR 18 1967
P.L.
CLERK

At a Criminal Term of the Supreme Court held in and for the County of Queens at the Courthouse at 135-01 Queens Boulevard, County of Queens of the City of New York, State of New York, on the 18 day of April, 1967.

PRESENT: Hon. J. Irwin Shapiro,
Justice, Supreme Court

PEOPLE OF THE STATE OF NEW YORK,

-against-

STUYVESANT INSURANCE COMPANY,
Surety,

COUNTY CLERK
INDEX #198-66

-for-

LAURRAS HOBBS, a/k/a HOOKES,

Principal

Stuyvesant Insurance Company, the surety above named having moved this Court for an order vacating the forfeiture of the undertaking executed by LAURRAS HOBBS a/k/a HOOKES, as principal and said Stuyvesant Insurance Company, as surety entered in the Office of the Clerk of Queens County on the 11th day of January, 1966, and said motion having duly come on to be heard.

Now on reading and filing the notice of motion herein dated the 8th day of December, 1966, together with proof of due service thereof, the affidavits of Stephen M. Nagler duly sworn to the 8th day of December, 1966, and the 1st day of February, 1967, the affidavit of John E. Silverberg, duly sworn to the 1st day of February, 1967, and upon all of the other papers and proceedings had herein and after hearing Stephen M. Nagler, attorney for the above named surety in favor of said motion and due deliberation having been had thereon, and the District Attorney appearing and not opposing it is, on motion of Stephen M. Nagler, attorney for the surety,

ORDERED that the said motion be and the same hereby is granted, and it is further

ORDERED that the forfeiture of the undertaking of bail heretofore executed by LAURRAS HOBBS a/k/a HOOKES as principal and Stuyvesant Insurance Company as surety, which said forfeiture was entered on the 28th day of December, 1965, be and the same hereby is in all respects vacated and set aside, and it is further

ORDERED that the judgment in the sum of five-hundred ($500) dollars entered upon said undertaking so forfeited in the office of the Clerk of the County of Queens on January 11th, 1966, be and the same hereby is vacated and the Clerk of the County of Queens upon being served with a certified copy of this order is hereby directed to make a note of the vacation of said judgment on all indices and records of said judgment contained in his office referring to this order, and it is further

ORDERED that a copy of this order with notice of entry thereof be served on the District Attorney of Queens County with 10 days after entry thereof.

Enter

★GRANTED
APR 18 1967
CLERK

J.S.C.

Justice, Supreme Court

At a Criminal Term of the Supreme Court held in and for the County of Queens at the Courthouse at 135-01 Queens Boulevard, County of Queens of the City of New York, State of New York, on the 18 day of April, 1967.

PRESENT: Hon. J. Irwin Shapiro,
Justice, Supreme Court

PEOPLE OF THE STATE OF NEW YORK,

-against-

STUYVESANT INSURANCE COMPANY,
Surety,

COUNTY CLERK
INDEX #199-66

-for-

LAURRAS HOBBS a/k/a HOOKES,

Principal

Stuyvesant Insurance Company, the surety above named having moved this Court for an order vacating the forfeiture of the undertaking executed by LAURRAS HOBBS a/k/a HOOKES, as principal and said Stuyvesant Insurance Company, as surety entered in the Office of the Clerk of Queens County on the 11th day of January, 1966, and said motion having duly come on to be heard.

Now on reading and filing the notice of motion herein dated the 8th day of December, 1966, together with proof of due service thereof, the affidavits of Stephen M. Nagler duly sworn to the 8th day of December, 1966, and the 1st day of February, 1967, the affidavit of John E. Silverberg, duly sworn to the 1st day of February, 1967 and upon all of the other papers and proceedings had herein and after hearing Stephen M. Nagler, attorney for the above named surety in favor of said motion and the District Attorney appearing and not opposing and due deliberation having been had thereon, it is, on motion of Stephen M. Nagler, attorney for the surety,

ORDERED that the said motion be and the same hereby is granted, and it is further

ORDERED that the forfeiture of the undertaking of bail heretofore executed by LAURRAS HOBBS a/k/a HOOKES as principal and Stuyvesant Insurance Company as surety, which said forfeiture was entered on the 28th day of December, 1965, be and the same hereby is in all respects vacated and set aside, and it is further

ORDERED that the judgment in the sum of five-hundred ($500) dollars entered upon said undertaking so forfeited in the office of the Clerk of the County of Queens on January 11th, 1966, be and the same hereby is vacated and the Clerk of the County of Queens upon being served with a certified copy of this order is hereby directed to make a note of the vacation of said judgment on all indices and records of said judgment contained in his office referring to this order, and it is further

ORDERED that a copy of this order with notice of entry thereof be served on the District Attorney of Queens County with 10 days after entry thereof.

Enter

★GRANTED
APR 18 1967
CLERK

J.S.C.

Justice, Supreme Court

At a Criminal Term of the Supreme Court held in and for the County of Queens at the Courthouse at 135-01 Queens Boulevard, County of Queens of the City of New York, State of New York, on the 18th day of April, 1967.

PRESENT: Hon J. Irwin Shapiro,
Justice, Supreme Court

PEOPLE OF THE STATE OF NEW YORK,

- against -

STUYVESANT INSURANCE COMPANY,
Surety,

COUNTY CLERK
INDEX #202-66

- for -

WALTER HARDY,
Principal.

Stuyvesant Insuaance Company, the surety above named having moved this Court for an order vacating the forfeiture of the undertaking executed by WALTER HARDY, as principal and said Stuyvesant Insurance Company, as surety entered in the Office of the Clerk of Queens County on the 11th day of January, 1966, and said motion having duly come on to be heard.

Now on reading and filing the notice of motion herein dated the 8th day of December, 1966, together with proof of due service thereof, the affidavits of Stephen M. Nagler duly sworn to the 8th day of December, 1966, and the 1st day of February, 1967, the affidavit of John E. Silverberg, duly sworn to the 1st day of February, 1967, and upon all of the papers and proceedings had herein and after hearing Stephen M. Nagler, attorney for the above named surety in favor of said motion, and the District Attorney appearing and not opposing and due deliberation having been had thereon,

it is, on motion of Stephen M. Nagler, attorney for the surety,

ORDERED that the said motion be and the same hereby is granted,

and it is further

ORDERED that the forfeiture of the undertaking of bail heretofore executed by WALTER HARDY as principal and Stuyvesant Insurance Company as surety, which said forfeiture was entered on the 28th day of December, 1965, be and the same hereby is in all respects vacated and set aside, and it is further

ORDERED that the judgment in the sum of five hundred ($500) dollars entered upon said undertaking so forfeited in the office of the Clerk of the County of Queens on January 11th, 1966, be and the same hereby is vacated and the Clerk of the County of Queens upon being served with a certified copy of this order is hereby directed to make a note of the vacation of said judgment on all indices and records of said judgment contained in his office referring to this order, and it is further

ORDERED that a copy of this order with notice of entry thereof be served on the District Attorney of Queens County with 10 days after entry thereof.

Enter

★GRANTED
APR 18 1967
CLERK

J.S.C.
Justice, Supreme Court

At a Criminal Term of the Supreme Court held in and for the County of Queens at the Courthouse at 135-01 Queens Boulevard, County of Queens of the City of New York, State of New York, on the 18th day of April, 1967.

PRESENT: Hon. J. Irwin Shapiro,
Justice, Supreme Court

PEOPLE OF THE STATE OF NEW YORK

- against -

STUYVESANT INSURANCE COMPANY,
Surety,

COUNTY CLERK
INDEX # 12820-64

- for -

FRANK ROBERSON,
Principal.

Stuyvesant Insurance Company, the surety above named having moved this Court for an order vacating the forfeiture of the undertaking executed by FRANK ROBERSON, as primcipal and said Stuyvesant Insurance Company, as surety entered in the Office of the Clerk of Queens County on the 25th day of November, 1964, and said motion having duly come on to be heard.

Now on reading and filing the notice of motion herein dated the 7th of May, 1965, together with proof of due service thereof, the affidavits of Stephen M. Nagler duly sworn to the ~~3rd~~ 7th day of May, 1965, and the 1st day of February, 1967, the affidavit of John E. Silverberg, duly sworn to the 1st day of February, 1967 and upon all of the other papers and proceedings had herein and after hearing Stephen M. Nagler, attorney for the above named surety in favor of such motion, and the District Attorney appearing and not opposing and due deliberation having been had thereon, it is, on motion of Stephen M. Nagler, attorney for the surety,

ORDERED that the said motion be and the same hereby is granted,

and it is further

ORDERED that the forfeiture of the undertaking of bail heretofore executed by FRANK ROBERSON as principal and Stuyvesant Insurance Company as surety, which said forfeiture was entered on the 11th day of August, 1964, be and the same hereby is in all respects vacated and set aside, and it is further

ORDERED that the judgment in the sum of five hundred ($500) dollars entered upon said undertaking so forfeited in the Office of the Clerk of and County of Queens on November 25, 1964, be and the same hereby is vacated and the Clerk of the County of Queens upon being served with a certified copy of this order is hereby directed to make a note of the vacation of said judgment on all indices and records of said judgment contained in his office referring to this order, and it is further

ORDERED that a copy of this order with notice of entry thereof be served on the District Attorney of Queens County with 10 days after entry thereof.

Enter

9/15

Justice, Supreme Court

★GRANTED
APR 18 1967
P.C.
CLERK

the Supreme Court held in and for the County of Queens at the Courthouse at 135-01 Queens Boulevard, County of Queens of the City of New York, State of New York, on the 18th day of April, 1967.

PRESENT: Hon. J. Irwin Shapiro,
Justice, Supreme Court

PEOPLE OF THE STATE OF NEW YORK,

- against -

STUYVESANT INSURANCE COMPANY,
Surety,

COUNTY CLERK
INDEX #203-66

- for -

WALTER HARDY,
Principal

Stuyvesant Insurance Company, the surety above named having moved this Court for an order vacating the forfeiture of the undertaking executed by WALTER HARDY, as principal and said Stuyvesant Insurance Company, as surety entered in the Office of the Clerk of Queens County on the 11th day of January, 1966, and said motion having duly come on to be heard.

Now on reading and filing the notice of motion herein dated the 8th day of December, 1966, together with proof of due service thereof, the affidavits of Stephen M. Nagler duly sworn to the 8th day of December, 1966, and the 1st day of February, 1967, the affidavit of John E. Silverberg, duly sworn to the 1st day of February, 1967, and upon all of the papers and proceedings had herein and after hearing Stephen M. Nagler, attorney for the above named surety in favor of said motion, and the District Attorney appearing and not opposing and due deliberation having been had thereon, it is, on motion of Stephen M. Nagler, attorney for the surety.

ORDERED that the said motion be and the same hereby is granted, and it is further

ORDERED that the forfeiture of the undertaking of bail heretofore executed by WALTER HARDY as principal and Stuyvesant Insurance Company,as surety, which said forfeiture was entered on the 28th day of December, 1965, be and the same hereby is in all respects vacated and set aside, and it is further

ORDERED that the judgment in the sum of five hundred ($500) dollars entered upon said undertaking so forfeited in the office of the Clerk of the County of Queens on January 11th, 1966, be and the same hereby is vacated and the Clerk of the County of Queens upon being served with a certified copy of this order is hereby directed to make a note of the vacation of said judgment on all indices and records of said judgment contained in his office referring to this order, and it is further

ORDERED that a copy of this order with notice of entry thereof be served on the District Attorney of Queens County with 10 days after entry thereof.

Enter

JLS

Justice, Supreme Court

★GRANTED
APR 18 1967
P.L.
CLERK

At a Criminal Term of the Supreme Court held in and for the County of Queens at the Courthouse at 135-01 Queens Boulevard, County of Queens of the City of New York, State of New York, on the 18th day of April, 1967.

PRESENT: Hon. J. Irwin Shapiro,
Justice, Supreme Court

PEOPLE OF THE STATE OF NEW YORK

- against -

STUYVESANT INSURANCE COMPANY,
Surety,

COUNTY CLERK
INDEX #200-66

- for -

BILL BROWN,
Principal.

Stuyvesant Insurance Company, the surety above named having moved this Court for an order vacating the forfeiture of the undertaking executed by BILL BROWN, as principal and said Stuyvesant Insurance Company, as surety entered in the Office of the Clerk of Queens County on the 11th day of January, 1966, and said motion having duly come on to be heard.

Now on reading and filing the notice of motion herein dated the 8th day of December, 1966, together with proof of due service thereof, the affidavits of Stephen M. Nagler duly sworn to the 8th day of December, 1966, and the 1st day of February, 1967, the affidavit of John E. Silverberg, duly sworn to the 1st day of February, 1967, and upon all of the papers and proceedings had herein and after hearing Stephen M. Nagler, attorney for the above named surety in favor of such motion and due deliberation having been had thereon, it is, on motion of Stephen M. Nagler, attorney for the surety,

ORDERED that the said motion be and the same hereby is granted, and it is further

ORDERED that the forfeiture of the undertaking of bail heretofore executed by BILL BROWN, as principal and Stuyvesant Insurance Company as surety, which said forfeiture was entered on the 28th day of December, 1965, be and the same hereby is in all respects vacated and set aside, and it is further

ORDERED that the judgment in the sum of five hundred ($500) dollars entered upon said undertaking so forfeited in the Office of the Clerk of the County of Queens on January 11, 1966, be and the same hereby is vacated and the Clerk of the County of Queens upon being served with a certified copy of this order is hereby directed to make a note of the vacation of said judgment on all indices and records of said judgment contained in his office referring to this order, and it is further

ORDERED that a copy of this order with notice of entry thereof be served on the District Attorney of Queens County with 10 days after entry thereof.

GRANTED
APR 18 1967
P.L.
CLERK

Enter

9/15

Justice, Supreme Court

At a Criminal Term of the Supreme Court held in and for the County of Queens at the Courthouse at 135-01 Queens Boulevard, County of Queens of the City of New York, State of New York, on the 18th day of April, 1967.

PRESENT: Hon. J. Irwin Shapiro,
Justice, Supreme Court

PEOPLE OF THE STATE OF NEW YORK,

-against-

STUYVESANT INSURANCE COMPANY,
Surety,

COUNTY CLERK
INDEX #201-66

-for-

BILL BROWN,
Principal.

Stuyvesant Insurance Company, the surety above named having moved this Court for an order vacating the forfeiture of the undertaking executed by BILL BROWN, as principal and said Stuyvesant Insurance Company, as surety entered in the Office of the Clerk of Queens County on the 11th day of January, 1966, and said motion having duly come on to be heard.

Now on reading and filing the notice of motion herein dated the 8th day of December, 1966, together with proof of due service thereof, the affidavits of Stephen M. Nagler duly sworn to the 8th day of December, 1966, and the 1st day of February, 1967, the affidavit of John E. Silverberg, duly sworn to the 1st day of February, 1967, and upon all of the papers and proceedings had herein and after hearing Stephen M. Nagler, attorney for the above named surety in favor of such motion, and the District Attorney appearing and not opposing and due deliberation having been had thereon, it is, on motion of Stephen M. Nagler, attorney for the surety,

ORDERED that the said motion be and the same hereby is granted, and it is further

ORDERED that the forfeiture of the undertaking of bail heretofore executed by BILL BROWN, as principal and Stuyvesant Insurance Company as surety, which said forfeiture was entered on the 28th day of December, 1965, be and the same hereby is in all respects vacated and set aside, and it is further

ORDERED that the judgment in the sum of five hundred ($500) dollars entered upon said undertaking so forfeited in the Office of the Clerk of the County of Queens on January 11, 1966, be and the same hereby is vacated and the Clerk of the County of Queens upon being served with a certified copy of this order is hereby directed to make a note of the vacation of said judgment on all indices and records of said judgment contained in his office referring to this order, and it is further

ORDERED that a copy of this order with notice of entry thereof be served on the District Attorney of Queens County with 10 days after entry thereof.

Enter

J.S.C.

Justice, Supreme Court

GRANTED
APR 18 1967
CLERK

At a Criminal Term of the Supreme Court held in and for the County of Queens at the Courthouse at 135-01 Queens Boulevard, County of Queens of the City of New York, State of New York, on the 18th day of April, 1967.

PRESENT: Hon. J. Irwin Shapiro
Justice, Supreme Court

PEOPLE OF THE STATE OF NEW YORK,

-against-

STUYVESANT INSURANCE COMPANY,
Surety,

COUNTY CLERK
INDEX #5533-65

-for-

ALBERT ADKINS,
Principal

Stuyvesant Insurance Company, the surety above named having moved this Court for an order vacating the forfeiture of the undertaking executed by ALDBERT ADKINS, as principal and said Stuyvesant Insurance Company, as surety entered in the Office of the Clerk of Queens County on the 30th day of June, 1965, and said motion having duly come on to be heard.

Now on reading and filing the notice of motion herein dated the 22nd day of December, 1965, together with proof of due service thereof, the affidavits of Stephen M. Nagler duly sworn to the 22nd day of December, 1965, the 1st day of February, 1967, the affidavit of John E. Silverberg, duly sworn to the 1st day of February, 1967, and upon all of the other papers and proceedings had herein and after hearing Stephen M. Nagler, attorney for the above named surety in favor of said motion, and the District Attorney appearing and not opposing and due deliberation having been had thereon, it is, on motion of Stephen M. Nagler, attorney for the surety,

ORDERED that the said motion be and the same hereby is granted, and it is further

ORDERED that the forfeiture of the undertaking of bail heretofore executed by ALBERT ADKINS as principal and Stuyvesant Insurance Company as surety, which said forfeiture was entered on the 14th day of May, 1965, be and the same hereby is in all respects vacated and set aside, and it is further

ORDERED that the judgment in the sum of five-hundred ($500) dollars entered upon said undertaking so forfeited in the office of the Clerk of the County of Queens on June 30th, 1965, be and the same hereby is vacated and the Clerk of the County of Queens upon being served with a certified copy of this order is hereby directed to make a note of the vacation of said judgment on all indices and records of said judgment contained in his office referring to this order, and it is further

ORDERED that a copy of this order with notice of entry thereof be served on the District Attorney of Queens County with 10 days after entry thereof.

Enter

GRANTED
APR 8 1967
CLERK

J.I.S.

Justice, Supreme Court

At a Criminal Term of the Supreme Court held in and for the County of Queens at the Courthouse at 135-01 Queens Boulevard, County of Queens of the City of New York, State of New York, on the 8 day of April, 1967.

PRESENT: Hon. J. Irwin Shapiro
Justice, Supreme Court

---x

PEOPLE OF THE STATE OF NEW YORK,

- against -

STUYVESANT INSURANCE COMPANY,
Surety,

COUNTY CLERK
INDEX #5537-65

-for-

ALBERT ADKINS,
Principal

---x

Stuyvesant Insurance Company, the surety above named having moved this Court for an order vacating the forfeiture of the undertaking executed by ALBERT ADKINS, as principal and said Stuyvesant Insurance Company, as surety entered in the Office of the Clerk of Queens County on the 30th day of June, 1965, and said motion having duly come on to be heard.

Now on reading and filing the notice of motion herein dated the 22nd day of December, 1965, together with proof of due service thereof, the affidavits of Stephen M. Nagler duly sworn to the 22nd day of December, 1965, and the 1st day of February, 1967, the affidavit of John E. Silverberg, duly sworn to the 1st day of February, 1967, and upon all of the other papers and proceedings had herein, and after hearing Stephen M. Nagler, attorney for the above named surety in favor of said motion, and the District Attorney appearing and not opposing and due deliberation having been had thereon, it is, on motion of Stephen M. Nagler, attorney for the surety,

ORDERED that the said motion be and the same hereby is granted, and it is further

ORDERED that the forfeiture of the undertaking of bail heretofore executed by ALBERT ADKINS as principal and Stuyvesant Insurance Company as surety, which said forfeiture was entered on the 14th day of May, 1965, be and the same hereby is in all respects vacated and set aside, and it is further

ORDERED that the judgment in the sum of five-hundred ($500) dollars entered upon said undertaking so forfeited in the office of the Clerk of the County of Queens on June 30th, 1965, be and the same hereby is vacated and the Clerk of the County of Queens upon being served with a certified copy of this order is hereby directed to make a note of the vacation of said judgment on all indices and records of said judgment contained in his office referring to this order, and it is further

ORDERED that a copy of this order with notice of entry thereof be served on the District Attorney of Queens County with 10 days after entry thereof.

Enter

★GRANTED
APR 18 1967
P. L.
CLERK

J.S.C.

Justice, Supreme Court

At a Criminal Term of the Supreme Court held in and for the County of Queens at the Courthouse at 135-01 Queens Boulevard, County of Queens of the City of New York, State of New York, on the 18th day of April, 1967.

PRESENT: Hon. J. Irwin Shapiro
Justice, Supreme Court

PEOPLE OF THE STATE OF NEW YORK,

-against-

STUYVESANT INSURANCE COMPANY,
Surety,

COUNTY CLERK
INDEX #5531-65

-for-

HENRY DOCTOR,
Principal

Stuyvesant Insurance Company, the surety above named having moved this Court for an order vacating the forfeiture of the undertaking executed by HENRY DOCTOR, as principal and said Stuyvesant Insurance Company, as surety entered in the Office of the Clerk of Queens County on the 30th day of June, 1965, and said motion having duly come on to be heard.

Now on reading and filing the notice of motion herein dated the 22nd day of December, 1965, together with proof of due service thereof, the affidavits of Stephen M. Nagler duly sworn to the 22nd day of December, 1965, and the 1st day of February, 1967, the affidavit of John E. Silverberg, duly sworn to the 1st day of February, 1967, and upon all of the other papers and proceedings had herein and after hearing Stephen M. Nagler, attorney for the above named surety in favor of said motion, and the District Attorney appearing and not opposing and due deliberation having been had thereon, it is, on motion of Stephen M. Nagler, attorney for the surety,

ORDERED that the said motion be and the same hereby is granted, and it is further

ORDERED that the forfeiture of the undertaking of bail heretofore executed by HENRY DOCTOR as principal and Stuyvesant Insurance Company as surety, which said forfeiture was entered on the 27th day of April, 1965, be and the same hereby is in all respects vacated and set aside, and it is further

ORDERED that the judgment in the sum of five-hundred ($500) dollars entered upon said undertaking so forfeited in the office of the Clerk of the County of Queens on June 30th, 1965, be and the same hereby is vacated and the Clerk of the County of Queens upon being served with a certified copy of this order is hereby directed to make a note of the vacation of said judgment on all indices and records of said judgment contained in his office referring to this order, and it is further

ORDERED that a copy of this order with notice of entry thereof be served on the District Attorney of Queens County with 10 days after entry thereof.

Enter

GRANTED
APR 18 1967
P. L.
CLERK

J I S

Justice, Supreme Court

At a Criminal Term of the Supreme Court held in and for the County of Queens at the Courthouse at 135-01 Queens Boulevard, County of Queens of the City of New York, State of New York, on the 18th day of April, 1967.

PRESENT: Hon. J. Irwin Shapiro
Justice, Supreme Court

PEOPLE OF THE STATE OF NEW YORK,

-against-

STUYVESANT INSURANCE COMPANY,
Surety,

COUNTY CLERK
INDEX #5532-65

-for-

HENRY DOCTOR,
Principal

Stuyvesant Insurance Company, the surety above named having moved this Court for an order vacating the forfeiture of the undertaking executed by HENRY DOCTOR, as principal and said Stuyvesant Insurance Company, as surety entered in the Office of the Clerk of Queens County on the 30th day of June, 1965, and said motion having duly come on to be heard.

Now on reading and filing the notice of motion herein dated the 22nd day of December, 1965, together with proof of due service thereof, the affidavits of Stephen M. Nagler duly sworn to the 22nd day of December, 1965, and the 1st day of February, 1967, the affidavit of John E. Silverberg, duly sworn to the 1st day of February, 1967, and upon all of the other papers and proceedings had herein and after hearing Stephen M. Nagler, attorney for the above named surety in favor of said motion, and the District Attorney appearing and not opposing and due deliberation having been had thereon, it is, on motion of Stephen M. Nagler, attorney for the surety,

ORDERED that the said motion be and the same hereby is granted, and it is further

ORDERED that the forfeiture of the undertaking of bail heretofore executed by HENRY DOCTOR as principal and Stuyvesant Insurance Company as surety, which said forfeiture was entered on the 27th day of April, 1965, be and the same hereby is in all respects vacated and set aside, and it is further

ORDERED that the judgment in the sum of five-hundred ($500) dollars entered upon said undertaking so forfeited in the office of the Clerk of the County of Queens on June 30th, 1965, be and the same hereby is vacated and the Clerk of the County of Queens upon being served with a certified copy of this order is hereby directed to make a note of the vacation of said judgment on all indices and records of said judgment contained in his office referring to this order, and it is further

ORDERED that a copy of this order with notice of entry thereof be served on the District Attorney of Queens County with 10 days after entry thereof.

Enter

GRANTED
APR 18 1967
P.L.
CLERK

J.S.C.

Justice, Supreme Court

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

THOMAS R. GILLIGAN,

Plaintiff-Respondent,

Index No.
15092/65

v.

JAMES FARMER and CONGRESS OF RACIAL EQUALITY, INC.

Defendants.

NOTE OF ISSUE

1. Notice of appeal served and filed January 17, 1966.

2. Record on appeal was served and filed December 5, 1967.

3. This is an appeal from an order denying Defendants'-Appellants' motion to dismiss the complaint on the grounds that the Plaintiffs -- Appellees, a public official, is entitled to a trial in a libel case on the issue of actual malice. The Defendants'--Appellees' urge that there are constitutional reasons as well as no actual malice as a matter of law.

4. This case is noticed for January 1968 term.

Dated New York, N.Y. December 5, 1967

Carl Rachlin, Esq.
150 Nassau Street
New York, N.Y.

Bradley R. Brewer, Esq.
866 Third Avenue
New York, N.Y.

Eugene G. Eisner, Esq.
13 Astor Place
New York, N.Y.

TO:
The Clerk of The Court, Appellate Division
Of the Supreme Court of the State of New York
First Department

Saxe, Bacon & Bolan
598 Madison Avenue
New York, N.Y.

At a Motion Term of the Supreme Court held in and for the County of New York at the 100 Centre St. Courthouse County of the City of New York, State of New York, on the ----- day of _____ 1967.

PRESENT; Hon. Frederick Backer
Justice, Supreme Court

County Clerk

Index # 16614-65

People of the State of New York,

-against-

Stuyvesant Insurance Company,
Surety,

-for-

Elaine Bibuld,

Principal.

Stuyvesant Insurance Company, the surety above named having moved this Court for an order vacating the forfeiture of the undertaking executed by Elaine Bibuild as principal and said Stuyvesant Insurance Company, as surety entered in the Office of the Clerk of New York County on the 19th day of November, 1964, and said motion having duly come on to be heard.

Now on reading and filing the notice of motion herein dated the 26th day of October 1965, together with proof of due service thereof, the affidavit of Stephen N. Nagler duly sworn to the 26th day of October, 1965, and the affidavit of John E. Silverberg, Esq., sworn to July 18, 1967, showing that the People of the State of New York have lost no rights and that the Principal's failure to appear was justified and after hearing Stephen M. Nagler, attorney for the above named surety in favor of said motion and Hon. Frank Hogan, Esq., District Attorney of New York County appearing in opposition and due deliberation having been had thereon, it is, on motion of Stephen M. Nagler, attorney for the surety,

ORDERED that the said motion be and the same hereby is granted, and it is further

ORDERED that the forfeiture of the undertaking of bail heretofor executed by Elaine Bibuld as principal and Stuyvesant Insurance Company as

At a Motion Term of the Supreme Court held in and for the County of New York at the 100 Centre St. Courthouse County of the City of New York, State of New York, on the ____ day of _____ 1967.

PRESENT; Hon. Frederick Backer
Justice, Supreme Court

County Clerk

Index # 16614-65

People of the State of New York,

-against-

Stuyvesant Insurance Company,
Surety,

-for-

Elaine Bibuld,

Principal.

Stuyvesant Insurance Company, the surety above named having moved this Court for an order vacating the forfeiture of the undertaking executed by Elaine Bibuild as principal and said Stuyvesant Insurance Company, as surety entered in the Office of the Clerk of New York County on the 19th day of November, 1964, and said motion having duly come on to be heard.

Now on reading and filing the notice of motion herein dated the 26th day of October 1965, together with proof of due service thereof, the affidavit of Stephen N. Nagler duly sworn to the 26th day of October, 1965, and the affidavit of John E. Silverberg, Esq., sworn to July 18, 1967, showing that the People of the State of New York have lost no rights and that the Principal's failure to appear was justified and after hearing Stephen M. Nagler, attorney for the above named surety in favor of said motion and Hon. Frank Hogan, Esq., District Attorney of New York County appearing in opposition and due deliberation having been had thereon, it is, on motion of Stephen M. Nagler, attorney for the surety,

ORDERED that the said motion be and the same hereby is granted, and it is further

ORDERED that the forfeiture of the undertaking of bail heretofor executed by Elaine Bibuld as principal and Stuyvesant Insurance Company as

surety, which said forfeiture was entered on the 28th day of October, 1964, and the same hereby is in all respects vacated and set aside, and it is further

ORDERED that the judgement in the sum of $500.- entered upon said undertaking so furfeited in the office of the Clerk of the County of New York on November 19th, 1964, be and the same hereby is vacated and the Clerk of the County of New York upon being served with a certified copy of this order is hereby directed to make a note of the vacation of said judgement on all indices and records of said judgement contained in his office referring to this order, and it is further

ORDERED that a copy of this order with notice of entry thereof be served on the District Attorney of New York County within 10 days after entry thereof.

Enter

_____

Justice, Supreme Court

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS CRIMINAL TERM

----------X

PEOPLE OF THE STATE OF NEW YORK
Plaintiff,

-against-

COUNTY CLERK

THE STUYVESANT INSURANCE COMPANY
Index #200-66

-for-

BILL BROWN,
Principal.

----------X

SIR:

PLEASE TAKE NOTICE that upon the annexed affidavit of STEPHEN M. NAGLER, Esq., duly sworn to the 8th day of December, 1966, THAT the undersigned will move this Court at Criminal Term, Part 1, of this Court, at the Courthouse in the Supreme Court Building, 125-01 Queens Blvd., Kew Gardens, Queens, New York, on the 21st day of December, 1966, at ten o'clock in the forenoon of that day or as soon theeafter as counsel can be heard for an order rescinding the forfeiture of bail and vacating and setting aside aujudgment in the amount of $500, resulting from bail forfeiture entered in office of the Clerk of Queens County on the 11th day of January, 1966, against The Stuyvesant Insurance Company, as Surety for BILL BROWN, Principal, and for such other and further relief as to the Court may seem just and proper.

Dated, Queens County, New York.

December 8, 1966.

Yours, etc.

STEPHEN M. NAGLER, Esq.
Attorney for Surety
150 Nassau Street, Rm. 1030
New York, New York 10038

TO: Nat Hentel, Esq.
District Attorney, Queens County
126-05 Hoover Avenue
Kew Gardens, Queens
New York

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS CRIMINAL TERM
----------X

THE PEOPLE OF THE STATE OF NEW YORK
Plaintiff,

-against-

THE STUYVESANT INSURANCE COMPANY
Surety,

AFFIDAVIT
Index #200

-for-

BILL BROWN,
Principal.
----------X

STATE OF NEW YORK)
COUNTY OF QUEENS) ss:

STEPHEN M. NAGLER, being duly sworn, deposes and says,

THAT I am the agent for the Stuyvesant Insurance Company, the surety herein, and as such agent am fully familiar with the facts herein.

THAT heretofore, and on the 23rd day of April, 1964, The Stuyvesant Insurance Company entered into a recognizance in the sum of FIVE HUNDRED (500) DOLLARS, wherein BILL BROWN was the principal, and The Stuyvesant Insurance Company was the surety, in favor of the People of the State of New York, for the appearance of said principal to answer a charge of violation of Section 2036 of the Penal Law.

THAT thereafter, on the 28th day of December, 1965, the case was called in the Criminal Court, held in and for the county of Queens, and the said principal not appearing, the said recognizance was forfeited.

THAT the principal's failure to appear at the court appointed time was neither willfull nor deliberate and the people have not lost any rights as a result of the non-appearance.

THAT on the aforesaid 28th day of December, 1965, the defendant, BILL BROWN, was unaware that he was required to appear in the Criminal Court because prior to that date his case, along with many others, had been removed to the United States District Court for the Eastern District of New York and had been removed completely from the calendar of the Criminal Court of the City of New York, which by virtue of the removal had lost jurisdiction over the defendant. The case remained in the federal courts for over a year before it was remanded to the Criminal Court by virtue of a stipulation between attorneys for BILL BROWN and all of his co-defendants and the District Attorney of Queens County. The restoration of the case to the calendar of the Criminal Court was not made known to the defendant on or before the 28th day of December, 1965.

THAT on information and belief the defendant BILL BROWN was on the 28th of December living in the city of Tallahassee, State of Florida, and was totally unaware that he was required to appear in the Criminal Court on that date, or even that the Criminal Court had jurisdiction over him.

THAT the charges against all co-defendants of BILL BROWN who had charges against them identical to his own and who were arrested with and under identical circumstances to BILL BROWN's had the charges against them dismissed on motion by the District Attorney when they appeared in the Criminal Court and on information and belief the District Attorney does not intend to prosecute BILL BROWN.

THAT it is readily apparent that the principal's absence at the appointed time has been adequately explained and by virtue of the special circumstances existing herein, a granting of the relief sought is fully warranted.

THAT not more than one year has elapsed since the forfeiture was declared.

THAT no previous application for the relief prayed for herein has been made.

Wherefore, deponent respectfully prays that an order be entered in the above entitled action releasing The Stuyvesant Insurance Company from all its obligations under the bail bond in connection with the charge of violation of Section 2036 of the Penal Law, against the said principal and that this court remit the forfeiture of the undertaking filed by the said company, and vacating and setting aside and discharging the judgment in the sum of FIVE HUNDRED (500) DOLLARS, in the office of the Clerk of Queens County, entered on the 11th day of January, 1966, in favor of the People of the State of New York, against the Stuyvesant Insurance Company, as surety and BILL BROWN as principal, upon receipt by him of the order of the court, and for such other and further relief as to the court may seem just and proper in the premises.

_____

STEPHEN M. NAGLER

Sworn to before me
this 8th day of December, 1966.

_____

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS CRIMINAL TERM

PEOPLE OF THE STATE OF NEW YORK
Plaintiff,

-against-

THE STUYVESANT INSURANCE COMPANY

COUNTY CLERK
Index #198-66

-for-

LAURRAS HOBBS, a/k/a HOOKES,
Principal.

SIR:

PLEASE TAKE NOTICE that upon the annexed affidavit of STEPHEN M. NAGLER, ESQ., duly sworn to the 8th day of December, 1966, THAT the undersigned will move this Court at Criminal Term, Part 1, of this Court, at the Courthouse, in the Supreme Court Building, 125-01 Queens Blvd., Kew Gardens, Queens, New York, on the 21st day of December, 1966, at ten o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for an order rescinding the forfeiture of bail and vacating and setting aside a judgment in the amount of $500, resulting from bail forfeiture entered in office of the Clerk of Queens County on the 11th day of January, 1966, against the Stuyvesant Insurance Company, as surety for LAURRAS HOBBS, a/k/a HOOKES, principal, and for such other and further relief as to the Court may seem just and proper.

Dated, Queens County, New York
December 8, 1966.

Yours, etc.

STEPHEN M. NAGLER, ESQ.
Attorney for Surety
Office and Post Office Address
150 Nassau Street, Rm. 1030
New York, New York 10038

TO: Nat Hentel, Esq.
District Attorney, Queens County
126-05 Hoover Avenue
Kew Gardens, Queens
New York

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS: CRIMINAL TERM

THE PEOPLE OF THE STATE OF NEW YORK
Plaintiff,

-against-

THE STUYVESANT INSURANCE COMPANY
Surety,

AFFIDAVIT
Index #198-66

-for-

LAURRAS HOBBS, a/k/a HOOKES,
Principal.

STATE OF NEW YORK)
COUNTY OF QUEENS) ss:

STEPHEN M. NAGLER, being duly sworn, deposes and says, THAT I am the agent for the Stuyvesant Insurance Company, the surety herein, and as such agent am fully familiar with the facts herein.

THAT heretofore, and on the 23rd day of April, 1964, The Stuyvesant Insurance Company entered into a recognizance in the sum of FIVE HUNDRED (500) DOLLARS, wherein LAURRAS HOBBS, a/k/a HOOKES, was the principal, and The Sturvesant Insurance Company was the surety, in favor of the People of the State of New York, for the appearance of said principal to answer a charge of violation of Section 1851 of the Penal Law.

THAT thereafter, on the 28th day of December, 1965, the case was called in the Criminal Court, held in and for the county of Queens, and the said principal not appearing, the said recognizance was forfeited.

THAT the principal's failure to appear at the court appointed time was neither willfull nor deliberate and the people have not lost any rights as a result of the non-appearance.

THAT on the aforesaid 28th day of December, 1965, the defendant, LAURRAS HOBBS, a/k/a HOOKES, was unaware that he was required to appear in the Criminal Court because prior to that date his case, along with many others, had been removed to the United States District Court for the Eastern District of New York and had been removed completely from the calendar of the Criminal Court of the City of New York, which by virtue of the removal had lost jurisdiction over the defendant. The case remained in the federal courts for over a year before it was remanded to the Criminal Court by virtue of a stipulation between attorneys for LAURRAS HOBBS, a/k/a/ HOOKES and all of his co-defendants and the District Attorney of Queens County. The restoration of the case to the calendar of the Criminal Court was not made known to the defendant on or before the 28th day of December, 1965.

THAT on the 28th day of December, 1965, the defendant's whereabouts were unknown to his attorney and the defendant was never informed that his presence was required in the Criminal Court on that or any other date, and on information and belief, the defendant believed that the Criminal Court lacked jurisdiction over him, since his case was still pending in the U.S. District Court for the Eastern District of New York.

THAT the charges against all co-defendants of LAURRAS HOBBS, a/k/a HOOKES, who had charges against them identical to his own and who were arrested with and under identical ciecumstances to LAURRAS HOBBS, a/k/a HOOKES, had the charges against them dismissed on motion by the District Attorney when they appeared in the Criminal Court and on information and belief the District Attorney does not intend to prosecute LAURRAS HOBBS, a/k/a HOOKES.

THAT it is readily apparent that the principal's absence at theappointed time has been adequately explained and by virtue of the special circumstances existing herein, a granting of the relief sought is fully warranted.

THAT not more than one year has elapsed since the forfeiture was declared.

THAT no previous application for the relief prayed for herein has been made.

Wherefore, deponent respectfully prays that an order be entered in the above entitled action releasing the Stuyvesant Insurance Company from all its obligations under the bail bond in connection with the charge of violation of Section 1851 of the Penal Law, against the said principal and that this court remit the forfeiture of the undertaking filed by the said company, and vacating and setting aside and discharging the judgment in the sum of FIVE HUNDERD (500) DOLLARS, in the office of the Clerk of Queens County, entered on the 11th day of January, 1966, in favor of the People of the State of New York, against the Stuyvesant Insurance Company, as surety and LAURRAS HOBBS, a/k/a HOOKES, as principal, upon receipt by him of the order of the court, and for such other and further relief as to the court may seem just and proper.in the premises.

STEPHEN M. NAGLER

Sworn to before me
this 8th day of December, 1966.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS: CRIMINAL TERM

PEOPLE OF THE STATE OF NEW YORK

-against-

STUYVESANT INSURANCE COMPANY,
Surety,

-for-

ALBERT ADKINS, HENRY DOKTOR, WALTER HARDY,

FRANK ROBERSON, DILL BROWN, LAURRAS HOBBS,
Principals, To Motions Each

SUPPLEMENTARY AFFIDAVIT

STATE OF NEW YORK)
: ss:
COUNTY OF NEW YORK)

JOHN E. SILVERBERG, being duly sworn deposes, and says:

That he is an attorney, and was counsel for forty-nine persons arrested in Queens County on April 4, 1964 and April 22, 1964 while demonstrating against the opening of the New York Worlds Fair.

That on or about June 17, 1964, all of these cases were removed to the United States District Court for the ~~Southern~~ Eastern District of New York, pursuant to the provisions of title 28, Section 1443, USC.

That thereafter Title 9 of the 1964 Civil Rights Act was enacted into law and the removal was appealed to the United States Supreme Court which eventually denied certiorary. Accordingly, the cases were remanded for trial to Queens County Criminal Court.

Eventually the deponent received post card notification

that all cases had been rescheduled for September 22, 1965. Upon information and belief, neither the District Attorney's office nor the Courts gave any further notice to the defendants of the pending litigation.

Prior to September 22, 1965, a Stay was obtained from Supreme Court Justice Joseph C. Conroy, of all said matters pending determination of a motion for trial by indictment. The Criminal Court cases and the motion for trial by indictment were then adjourned several times while conferences were held with the District Attorney's office looking toward a final disposition of said cases.

On October 21, 1965, it was agreed that the motion for trial by indictment be adjourned to November 24,1965, while the Criminal Court actions would be adjourned to November 26, 1965.

In the interim it was definitely decided that those defendants charged with having violated section 1990 of the Penal law would plead guilty to that charge and all other charges would be dismissed. This was an excellent disposition for the defendants since section 1990 P.L. carries a maximum penalty of a $5.00 fine.

A few days prior to November 26, 1965, your deponent met with a clerk in Criminal Court, Queens County, who was in charge of part 1B and arranged directly with him for an adjournment to December 14, 1965, of ~~this~~ the criminal charges including several cases against Worlds Fair demonstrators that were being handled by Attorney Stephen M. Nagler. It was not decided at that time whether the cases would be dismissed in the various parts in which they were situated at the time of their removal to the Federal Courts, or whether they would all be placed

in a special part for dismissal. Deponent was advised by said Clerk that the District Attorney's Office would make that decision and apprise Deponent as to how that issue would be handled

Subsequently, Assistant District Attorney Harvey Ehrlich, contacted Deponent advising that all cases would be heard in a Special Court before the Honorable Judge George Balbach, and also advising Deponent that Mr. Ehrlich had prepared a statement on behalf of the People and that Deponent should prepare a statement on behalf of defendants to be submitted for the record, but that at the time of dismissal, Attorney William H. Booth would talk for the defendants for the record.

On December 14, 1965, Mr. Ehrlich read his statement into the record. The statement had been prepared in advance and in order to save Counsel the trouble of ordering the transcript of proceedings on that day which were lengthy and voluminous Mr. Ehrlich on December 15, 1965, issued a typewritten statement of his remarks before the Court of the previous day copy of which is annexed hereto and made a part hereof.

Judge Balbach agreed to every recommendation of the District Attorney except that he refused to dismiss cases in the absence of a defendant.

The next several weeks while Frank O'Connor was still District Attorney of Queens County were spent attempting to locate and bring before the Court defendants who could not be located as of December 14, 1965.

Subsequently, when Mr. Hentel became District Attorney of Queens County conferences were held at which it was agreed that the cases against the remaining defendants who could not be located, would all be dismissed. The details were to beironed out at some subsequent day. Your Deponent made numerous phone

calls and visits to Assistant District Attorney Morton Greenspan to carry out the decision which had been made in conference with Mr. Howard Czerny and other assistants in Mr. Hentel's office but was always told that the matter would be taken care of although it could not be concluded at the particular time. It was clearly understood by Mr. Hentel's office that the reason for the promised dismissals was so as to remit bail forfeitures which had occured before Judge Balbach in 1965.

Sworn to befor me this
1st day of February, 1967,

John E. Silverberg

Notary Public

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS:CRIMINAL TERM

PEOPLE OF THE STATE OF NEW YORK,

-against-

STUYVESANT INSURANCE COMPANY,
Surety,

-for-

ALBERT ADKINS, HENRY DOKTOR,WALTER HARDY,
FRANK ROBERSON,BILL BROWN,LAURRAS HOBBS,
Principal.

SUPPLEMENTARY AFFIDAVIT

STATE OF NEW YORK)ss.:
COUNTY OF NEW YORK)

STEPHEN M. NAGLER, ESQ. being duly sworn, deposes and says:

1. I am the attorney for the Surety herein, and am familiar with the facts involved in the forfeitures of bail in the above entitled cases.

2. All of the principals named above were arrested at a Civil Rights demonstration at the Worlds Fair in April, 1964.

3. Shortly after their arrests, the cases for the principals herein along with many others were removed to the United States District Court, Eastern District of New York (Docket No.64C886). When the petition for Removal was filed, the Criminal Court of the City of New York lost jurisdiction over the principals and their co-defendants and their cases were completely removed from the Calendar of the said Criminal Court. The cases of all of the principals except Hardy were remanded to the Criminal Court of the City of New York at various times during 1965 on a stipulation between Counsel and the District Attorney of Queens County. This stipulation was based on a decision by the said District

Attorney that charges against all of the principals herein and their co-defendants would be dismissed in the Criminal Court. On information and belief no notice requiring the principals herein to appear on any given date was sent out by the said Criminal Court. None of the principals whose bail was forfeitured had knowledge either that they cases had been remanded or that they were required to appear on a given date. Their co-defendant who did appear learned of the date on which appearances would be required from their attorneys. The failure of the principals herein to appear resulted from a lack of knowledge on their part that they be present in the Criminal Court of the City of New York, County of Queens, on the date their forfeitures occured or on any other date. The above is true of the defendant Hardy who was represented by John Silverburg, except that his case was remanded by order of the Supreme Court of the United States. Had the forfeitures occured on "adjourned dates", so that the principals herein would have had previous knowledge of the requirement that they appear, this would of course not be the case.

4. Subsequent to their remand, the cases of the principals named above were placed on the calendar of the Criminal Court of the City of New York, County of Queens solely for the purpose of dismissal along with their co-defendants. In fact, the charges against all their co-defendants were dismissed. The charges against the principal herein were not dismissed solely because they failed to appear. This is not a legal reason for refusing to dismiss since in every case the defendants were represented by Counsel who was present at the time bail was forfeited and the cases were on the calendar solely for the purpose of dismissal of the charges which resulted in bail

forfeiture. This fact is illustrated by a statement read into the record of the Criminal Court of the City of New York by Honorable Harvey B. Ehrlich, an Assistant District Attorney in charge of these cases.

5. As to the principal Adkins, the facts are typical. Albert Adkins was arrested on the same complaint as that against Lane Perdue and Marshall Brown. These cases were placed on the calendar of the Criminal Court on or about the 14th of May 1965, shortly after they were remanded from the United States District Court for the Eastern District of New York. I represented all three defendants at that time. Lane Perdue and Marshall Brown both appeared, charges against them were dismissed on motion by the District Attorney. The facts are almost identical in the case of Henry Doktor whose co-defendants on information and belief were one Patricia Due and one Stephen Gordon. All three defendants were represented by Eugene Brook and, on information and belief on the 27th day of April, 1965, the charges were dismissed against co-defendants Henry Doktor who appeared in the Criminal Court, but not against Henry Doktor who had no notice of the requirement that he appear, and who failed to appear on that day. I represented all of the other defendants at the time bail was forfeitured in the case of the principals, with the exception of Walter Hardy. The facts involving the forfeiture of bail in their cases are virtually identical as set out above. Their cases were placed on the calendar of the Criminal Court shortly after they were remanded from the United States District Court. They came on before the Honorable George Balbach who dismissed the charges against defendants who actually appeared, but forfeitured the bail of the principals named above not heretofore discussed.

WHEREFORE, deponent respectfully pray that the forfeiture of bail in the cases of the principals named above be remitted as requested in the main motions.

_____

Sworn to before me this

day of February 1967

_____

MOTION

At a ~~Criminal~~ Term of the Supreme Court held in and for the County of ~~Queens~~ NEW YORK at the ~~Criminal~~ COURTHOUSE Courthouse at ~~125-01 Queens Blvd., Kew~~ 100 CENTRE STREET, County of ~~Queens~~ NEW YORK of the City of New York, State of New York, on the ~~2~~ 12 day of ~~September~~ DECEMBER 1967.

PRESENT: Hon. ~~[illegible]~~ FREDERICK BACKER
Justice, Supreme Court

People of the State of New York,

-against-

Stuyvesant Insurance Company,
Surety,

~~(Wade)~~ ELAINE BIBUD
~~HENRY PORTER~~,
-for-
~~Jimmie Jones~~,
Principal.

County Clerk

Index ~~#3117-66~~ 16614-65

Stuyvesant Insurance Company, the surety above named having moved this Court for an order vacating the forfeiture of the undertaking executed by ~~Henry Porter~~ ELAINE BIBUILD as principal and said Stuyvesant Insurance Company, as surety, entered in the Office of the Clerk of ~~Queens~~ NEW YORK County on the ~~2nd~~ 19th day of ~~April, 1967~~ NOVEMBER, 1964, and said motion having duly come on to be heard.

Now on reading and filing the notice of motion herein dated the ~~16th~~ 26TH day of ~~December~~ OCTOBER 196~~6~~, together with proof of due service thereof, the affidavit of Stephen M. Nagler duly sworn to the ~~16th~~ 26TH day of ~~December~~ OCTOBER 196~~6~~, AND THE AFFIDAVIT OF JOHN E. SILVERBERG, ESQ., SWORN TO JULY 18, 1967, ~~and on the consent of the District Attorney of the County of Queens showing that~~ showing that the People of the State of New York have lost no rights AND THAT THE PRINCIPAL'S FAILURE TO APPEAR WAS JUSTIFIED and after hearing Stephen M. Nagler, attorney for the above named surety in favor of said motion ~~and Hon. Thomas J. Mackell, District Attorney, of Queens County by Lawrence McGrath, Assistant District Attorney, appearing but not opposing~~ AND HON. FRANK HOGAN, ESQ., DISTRICT ATTORNEY OF NEW YORK COUNTY APPEARING IN OPPOSITION, and due deliberation having been had thereon, it is, on motion of Stephen M. Nagler, attorney for the surety,

ORDERED that the said motion be and the same hereby is granted, and it is further

ORDERED that the forfeiture of the undertaking of bail heretofor executed by ~~Henry Porter~~ ELAINE BIBULD as principal and Stuyvesant Insurance Company as surety, which said forfeiture was entered on the ~~28th~~ 4TH day of ~~February~~ OCTOBER, 196~~7~~, and the same hereby is in ALL RESPECTS VACATED AND SET ASIDE, AND IT IS FURTHER

ORDERED that the Judgement in the sum of $500.- entered upon said undertaking so forfeited in the office of the Clerk of the County of ~~Queens~~ NEW YORK on ~~April 13th~~ NOVEMBER 19TH, 1964, be and the same hereby is vacated and the Clerk of the County of ~~Queens~~ NEW YORK upon being served with a certified copy of this order is hereby directed to make a note of the vacation of said judgement on all indices and records of said judgement contained in his office referring to this order, and it is further

ORDERED that a copy of this order with notice of entry thereof be served on the District Attorney of ~~Queens~~ NEW YORK County within 10 days after entry thereof.

Enter

★GRANTED
JAN 30 1967
CLERK

J.S.C.
Justice, Supreme Court

At a Criminal Term of the Supreme Court held in and for the County of Queens at the Courthouse at 135-01 Queens Boulevard, County of Queens of the City of New York, State of New York, on the day of , 1967.

PRESENT: Hon. [redacted]
Justice, Supreme Court

People of the State of New York,

-against-

Stuyvesant Insurance Company,
Surety,

-for-

ELAINE BIBULO, [redacted]
.....
Principal,

ORDER
COUNTY CLERK
INDEX #[redacted]

Stuyvesant Insurance Company, the surety above named having moved this Court for an order vacating the forfeiture of the undertaking executed by [redacted] ELAINE BIBULO, as principal and said Stuyvesant Insurance Company, as surety entered in the Office of the Clerk of ~~Queens~~ NEW YORK County on the ~~14th~~ 14TH day of NOVEMBER, 1964, and said motion having duly come on to be heard.

Now on reading and filing the notice of motion herein dated the 3rd day of May, 1965, together with proof of due service thereof, the affidavit of Stephen M. Nadler duly sworn to the ~~3rd~~ day of ~~May~~ 1967, AND ON THE AFFIDAVIT OF JOHN E. SILVERBERG, ESQ. SWORN TO THE 18TH DAY OF JULY, 1967 AND ~~and on the consent of~~ the District Attorney of the County of ~~Queens~~ NEW YORK stating that the People of the State of New York have lost no rights and after hearing Stephen M. Nadler, attorney for the above named surety in favor of said motion and Frank O'Connor, District Attorney of Queens County by Lawrence McGrath, Assistant District Attorney, appearing but not opposing, and due deliberation having been had thereon, it is, on motion of Stephen M. Nadler, attorney for the surety,

ORDERED that the said motion be and the same hereby is granted, and it is further

ORDERED that the forfeiture of the undertaking of bail heretofore executed by PAUL DAVIS as principal and Stuyvesant Insurance Company as surety, which said forfeiture was entered on the 25th day of NOVEMBER, 1964, be and the same hereby is in all respects vacated and set aside, and it is further

ORDERED that the judgment entered upon said undertaking so forfeited in the office of the Clerk of the County of Queens on NOVEMBER 25, 1964, be and the same hereby is vacated and the Clerk of the County of Queens upon being served with a certified copy of this order is hereby directed to make a note of the vacation of said judgment on all indices and records of said judgment contained in his office referring to this order, and it is further

ORDERED that a copy of this order with notice of entry thereof be served on the District Attorney of Queens County with 10 days after entry thereof.

Enter

Justice, Supreme Court

March 31, 1966

Mr. Morty Greenspan
Assistant District Attorney
Queens County
126-05 Hoover Avenue
Kew Gardens, New York

Re: Remaining World's Fair Cases

Dear Sir:

Pursuant to our recent conversation, I am writing you a list of the cases which have not yet been dismissed due to the non-appearance of the defendants.

Our main concern at this time is that in some of these cases there have been bail forfeitures and prior to making a motion, to vacate the forfeitures we would like to have the cases dismissed in Criminal Court.

The cases which I handled still outstanding are:

Name	Part	Dkt. No.	Charge
SAMUEL KINCH	IB	B1826	Disorderly conduct
	IB	B1832	P.L.1851
	III	958	P.L.1851
	III	959	Disorderly conduct
	III	1737	P.L.1851
ISAIAH BRUNSON	IB	B1868	P.L.2036, P.L.1851
	IB	B1870	Disorderly conduct
ANGIE EGGERTON	IB	B1869	P.L.2036, P.L.1851
	IB	B1871	Disorderly conduct
PERCY GILMER	IB	B1854	P.L.1851
	IB	B1839	Disorderly conduct
LYNN SKOLNICK	IB	B1862	P.L.1851
	IB	B1848	Disorderly conduct

Name	Part	Dkt. No.	Charge
STANLEY MURRAY	IB	B1859	P.L.1851
	IB	B1844	Disorderly conduct
RAPHAEL DELGADO	IB	B2227	Disorderly conduct
	IB	B2228	P.L.1851, P.L.1530 and P.L.1532
ANDY YOUNG	IB	B2602	Disorderly conduct
MELVIN OWENS	III	1122	P.L.1851
	III	1124	P.L.1990, P.L.722
WALTER HARDY	III	1134	P.L.1990, P.L.722
	III	1135	P.L.1851

The list of cases that Steven Hagler is handling are as follows:

Name	Part	Dkt. No.	Charge
ALBERT ADKINS	III	1302, 1318 and 1334	P.L.722, P.L.2036 and P.L.1851
BILL BROWN	III	1305, 1321 and 1337	P.L.722, P.L.2036 and P.L.1851
HENRY DOCTOR	III	1297, 1313 and 1329	P.L.722, P.L.2036 and P.L.1851
LAURRAS HOBBS	III	1307, 1323 and 1339	P.L.722, P.L.2036 and P.L.1851
FRANK ROBERSON	III	1301, 1317 and 1333	P.L.722, P.L.2036 and P.L.1851

All of Mr. Hagler's cases are bail cases.

Of my cases, only Raphael Delgado, Andy Young, Melvin Owens and Walter Hardy are bail cases.

Two of my clients, Melvin Owens and Walter Hardy, would have pleaded guilty to violating 1990 of the Penal Law if we knew their whereabouts.

This matter has been discussed with thirteen other defendants who have already pleaded guilty to violating 1990 of the Penal Law and they have no objection at all to these charges being dismissed as to Melvin Owens and Walter Hardy in order that the bail forfeitures may be vacated.

Mr. Joseph Hitner, counsel for the New York City Transit Authority, I believe also has no objection to dismissal of these charges against Melvin Owens and Walter Hardy in abstention. However, he should be notified by your office that it is your intention to dismiss these matters in the absence of the defendants so that he may either consent to same in writing or come down and give his consent upon the record. He would like the initiative for this matter to come from your office at which time I am quite certain that he will consent to the dismissals.

I am enclosing a release which was secured from Raphael Delgado who is presently a student at Philander Smith College in Little Rock, Arkansas.

As I told you the last time I was in your office, I represented sixty-one defendants in Kings County all of whose cases were dismissed with the defendants not present upon the recommendation of an assistant District Attorney speaking for Mr. Koota.

Those dismissals were entirely without incident. Unfortunately, here in Queens County, Judge Balbach who dismissed most of the World's Fair cases took a position that defendants had to be present. However, thereiss nothing in law that requires the presence of defendants for the dismissal of their cases.

Incidentally, in the Brooklyn cases we had no releases either, however, counsel did state for the record that there would be no suits for false imprisonment or malicious prosecution or any other suit arising from the arrests.

I believe that the best prodedure to follow with the remaining cases would be to obtain a written consent from Mr. Hitner for dismissal of all charges against Melvin Owens and Walter Hardy and then to re-schedule all the remaining cases in one part, call them all together as was done in Brooklyn and dismiss they as a body.

Kindly communicate with me in the near future so that we may finally dispose of these matters.

Very truly yours,

JOHN E. SILVERBERG

JES:hrl

January 30, 1967

Harvey B. Ehrlich, Esq.
c/o President, Council of
the City of New York
City Hall, New York

Re:Worlds Fair Cases:Albert Adkins, Henry Doktor,Walter Hardy
Laurras Hobbs, Bill Brown,Frank Roberson.

Dear Mr. Ehrlich:

Bail Forfeiture Remission regarding the above entitled cases are now on the calendar, Supreme Court of the State of New York, County of Queens, Criminal Term. As I am sure you will recall, all the persons named above were arrested at the New York Worlds Fair during April, 1964. Shortly thereafter, they were moved to the United States District Court for the Eastern district of New York. Eventually Honorable Frank O'Connor, then District Attorney of Queens County, decided that all the charges against all remaining defendants whose cases were then pending in the Federal Court should be dismissed. On that basis, you and I signed a stipulation remanding the cases pending in the Federal Court to the Criminal Court of the City of New York.

As you will recall the only basis on which we agreed to sign a stipulation was that the cases would be dismissed. On Remand the cases were placed on the calendar for the Criminal Court, which had loss jurisdiction over them during the period of their removal. As an Assistant District Attorney in charge of these cases, you prepared a statement which you read into the record stating the reasons for the dismissal. Although the charges against most of the defendants were dismissed, the charges against those who did not appear were not. This latter group is named above, and in these cases bail is forfeitured. The reasons for their failure to appear are varied:Frank Roberson was in jail in the State of Florida, several others were overseas,one or two

were away at school. In no case were the defendants notified of the requirement that they appear before the Criminal Court, and since at the time of the forfeitures, the cases had just been remanded from the Federal Court, it could not be argued that the defendants merely forgotten an adjourned date.

I would appreciate an affidavit from you stating your recollection of the matters recited above. As the motions are on before the Honorable J. Erwin Shapiro, Justice of the Supreme Court, on Thursday, February 2, 1967, it is vital that I hear from you at once. All affidavits must be submitted not later than Wednesday February 1st.

Thank you for your time and attention.

Cordially,

Stephen M. Nagler
Associate Counsel

SMN:m
By Hand

February 1, 1967

Mr. Floyd B. McKissick
National Director
Congress of Racial Equality
200 West 135th Street
New York, New York 10030

Re: B-128933 - Stephen Kosloff
- - - - - - - - - - - - - - - -

Dear Mr. McKissick:

Thank you for yours of January 30th.

We appreciate your cooperation in this matter and trust that we will hear from you about it in the very near future. If full payment cannot be made we shall, of course, accept partial payment until we are fully reimbursed.

Yours very truly,

Daniel Giordano

zm

cc: Stephen Nagler, Esq.
150 Nassau Street
New York, N.Y. 10038

April 25, 1967

Mr. Nicky Shapiro
Stuyvesant Insurance Company
877 Brook Avenue
Bronx, New York

Dear Nicky:

These orders just arrived this morning. They represent the last of the World's Fair bail forfeiture remissions. Our record is 100%.

If I may be of further assistance please do not fail to contact me.

Cordially,

Stephen M. Nagler

SMN:n

NOTE:

How can you protect complaining tenants from harrassment from landlords

a) Civilian action as a counter-claim

b) Other methods

Mss
596 SEDFRE

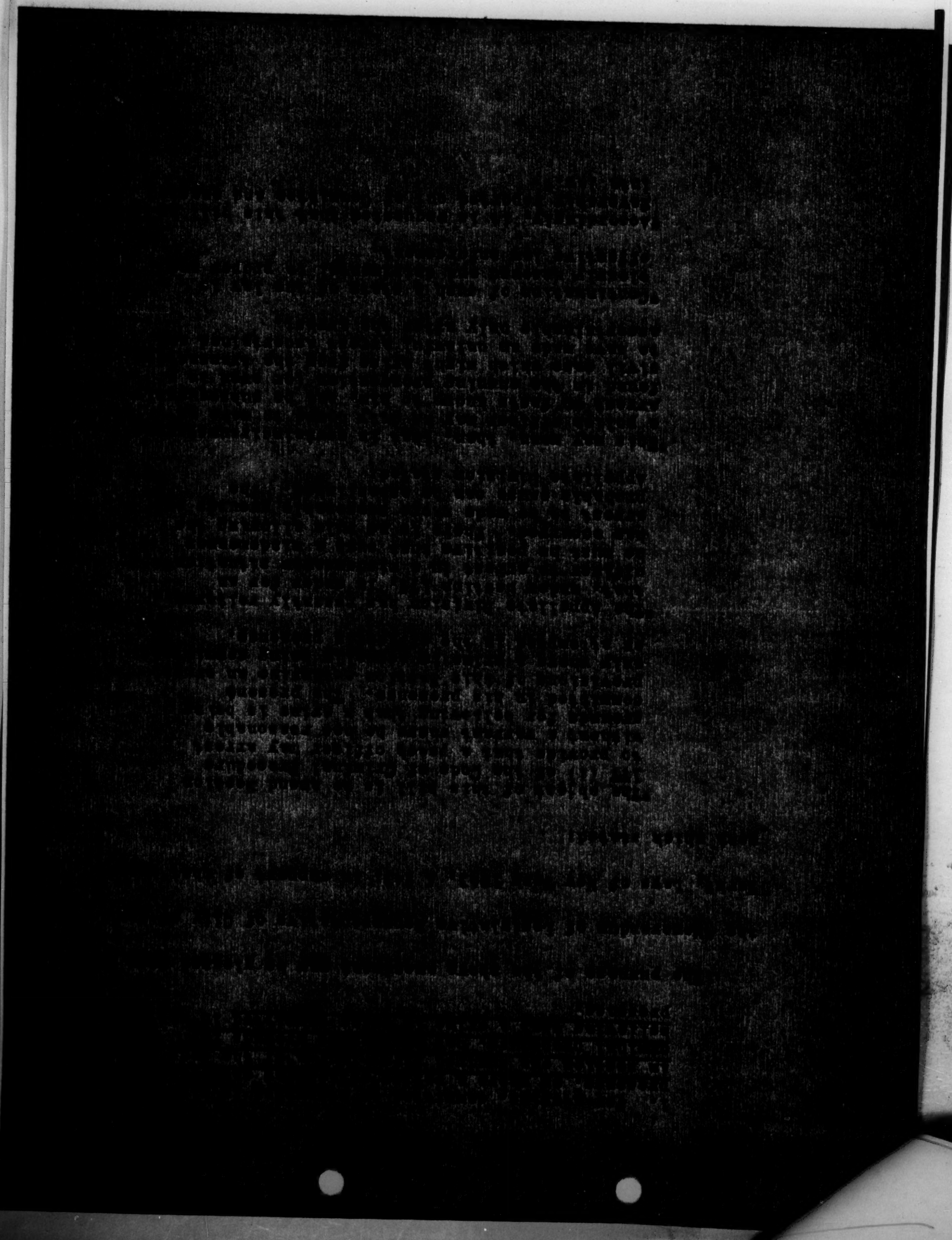
New York vs Toliver, Henrietta, Jan. 1963 - Jan. 1964
(Appeal)

Box 41
Folder 5

Historical Society of Wisconsin

Please Retain Original Order

[redacted]



Inasmuch as Herman Doughtry was acquitted of both charges against him, (misdemeanor) it matters little what misdemeanor he was charged with first, although in fact the disorderly conduct charge preceded the one for assault 3rd degree.

Clearly, the foregoing citations of judicial opinion ranging from the Magistrates Court to affirmation by the Court of Appeals stand for the principle propounded here: that an acquittal after an arrest on a charge of a misdemeanor makes that arrest unlawful. Any doubt of this principle should be dismissed in light of the aforementioned amendment to the Code of Criminal Procedure Section 177 (1) and the accompanying comment.

Therefore this court is urged to find that on the evening of April 28, 1967, Herman Doughty was unlawfully arrested.

CITY MAGISTRATES COURTS OF THE CITY OF NEW YORK

WEEK-END NIGHT COURT, BOROUGH OF MANHATTAN

THE PEOPLE OF THE STATE OF NEW YORK	Docket #18,038
On the complaint of	Charge: 1851 P. L.
PATROLMAN MATO	
-against-	
HENRIETTA TOLIVER,	
Defendant.	ARRAIGNMENT

April 28, 1962

B e f o r e:

HONORABLE WALTER BAYER,
Magistrate

A p p e a r a n c e s:

Defendant appears without counsel.

BRIDGEMAN: Daniel Sullivan.

Louis F. Lanuto
Official Court Reporter

BRIDGEMAN: Docket #18,038; Henrietta Toliver.

THE COURT: Will you please, listen!

BRIDGEMAN: Charged with 1851 of the Penal Law.

Officer, do you swear to the affidavit?

THE OFFICER: Yes, sir, I do.

BRIDGEMAN: The officer is charging you, lady, with interfering with a police officer; April 28, 1962, Patchin Avenue, MacDougal Streets, in the County of Kings.

You did delay the officer in the performance of his duty; did step in between the officer and his prisoners.

On the charge, you have the right to communicate with your friends or relatives, by letter or telephone; you have the right to an adjournment to get a lawyer, bring witnesses to court.

How about this case, here?

THE OFFICER: Excuse me?

THE COURT: She went in between the prisoners and you?

THE OFFICER: That's right. She tried

to grab the prisoners from me; she gave me a hard time.

THE COURT: Do you want to say anything?

THE DEFENDANT: Can I say something?

THE COURT: Yes, go ahead.

THE DEFENDANT: I came out of my house; come down to the corner; which I have six kids and I have two sons that work in the laundry. I went out there to find out what was the matter. He was pulling my nephew, which is Herman Dotrie, and I said, "What is the matter?" I said, "Come on, go home." That time, he had his gun drawn and that night stick he has in his hands and I said, "Come on --" He said, "Lady, go on about your business." He says, "I'll shoot, if I have to." I wasn't talking to him. He didn't say anything until that police officer came up (indicating). They started whipping me; handcuffed me to the post in the Police Station and whipped me.

THE COURT: Why did you get in between?

THE DEFENDANT: I wasn't getting in between them. I told them to "Come on, go home." I got inside -- inside of the patrol car. This officer started punching me in my mouth, as you see now. I have -- I got down to the Police Station where they dragged me down there -- handcuffed me to the post and started whipping me, inside there. I told him that I was having a baby, "Please, turn me loose." He called me every name that he can call me. After all, he came from a mother, too. I'm a mother of six kids, you understand. If he don't have no respect for a woman, he have no respect for his mother.

THE COURT: All right, what date do you want? I guess we can put it on another date, not the same. That's in another court, entirely. That's in Adolescent. This is in East New York.

THE OFFICER: How about May 3rd?

THE COURT: May 3rd, is all right with you for your case?

BRIDGEMAN: Come back to court May 3rd.

THE DEFENDANT: All right, I guess so. Can I say one thing? If I have to go back in that police van and get beat up, I would rather very much prefer to go somewhere else -- if I have to go and get beat up.

THE COURT: Madam, there's no beating up! Nobody will touch you!

THE DEFENDANT: I had -- when I went to the Police Station, I had no clothes on.

THE COURT: Madam, they'll be no trouble, of any kind! You will get proper treatment, you will be properly treated.

THE DEFENDANT: My husband had to take off his clothes andunderclothes here and give it to me to put on to come here, now.

THE COURT: All right, is she identified as living there?

THE DEFENDANT: Here's my arm, black and blue, my leg is all swollen up.

THE COURT: Madam! Madam! We're talk-

ing about bail now. You have had enough! I gave you a chance to make your speech. You did! That's all!

No identification?

THE OFFICER: No.

THE COURT: Five hundred dollars' bond or twenty-five dollars' cash, for May 3rd.

Is there somebody here to put up her bail?

THE DEFENDANT: My husband is outside. He should have it.

BRIDGEMAN: You have the right to communicate free of charge, by letter or telephone, from the office of the warden.

- - - - - - - -

The above is an accurate copy of the minutes in this case.

Louis F Lauth

Official Court Reporter

Form 450-60M-703125(61) 114

AFFIDAVIT—GENERAL

City Magistrates' Court of the City of New York

Night
.....COURT, BOROUGH OF.....

CITY OF NEW YORK,
COUNTY OF N Y } ss.:

Ptl Arthur Watsel

81 pct Kings

of N....., County of .....

City of New York, being duly sworn, says, that on April 28 1968 at 9:25 pm M.

at Patchen Ave and Mc Donough St

in the County of Kings, City and State of New York

the defendant Henrietta Toliver

did commit the crime of violation of section 1851 of the Penal Law, in that defendant did delay and obstruct deponent, by getting between deponent and prisoners and attempting to get prisoners away from deponent

WHEREFORE deponent prays that the defendant be dealt with according to law

Sworn to before me

April 28 1968

City Magistrate

Pending Leaves (see R & P 14.30)

Vacation .....

Other Leave: .....

Adjourned to [illegible] Bail $ ____

at ____ Court

If paroled, the defendant was advised pursuant to section 1694b of the Penal Law.

APR 28 1962 [signature]

Date City Magistrate

Adjourned to ____ Bail $ ____

If paroled, the defendant was advised pursuant to section 1694b of the Penal Law.

Date City Magistrate

Adjourned to ____ Bail $ ____

If paroled, the defendant was advised pursuant to section 1694b of the Penal Law.

Date City Magistrate

CASH BAIL
76648

Week-end/Night Court Docket 19819 Court Docket 9010 grubel

CITY MAGISTRATES' COURT
OF THE CITY OF NEW YORK

Night Court, Borough of ____

THE PEOPLE OF THE STATE OF NEW YORK

vs.

1. Henrietta Toliver f 31

523 Mc Donough St Bk
Address

2. ____
Address

3. ____
Address

4. ____
Address

5. ____
Address

6. ____
Address

Defendant arraigned April 28 1962

Hon. Myer
City Magistrate

Hatrol 81 pct
Arresting Officer Assignment

The defendant on being brought before me was informed of the within charge of

1851 PL

of his right to communicate with relatives or friends by letter or telephone, free of charge, of his right to the aid of counsel at every stage of the proceedings and before any further proceedings and of his right to an adjournment to procure counsel.

APR 28 1962

WITNESSES

1. Pt. Arthur Dailey
3 Lavista
Address

2. ____
Address

3. ____
Address

4. ____
Address

Edwin S. Douglas, Jr.

CASH BAIL POSTED. Treas. Cert. # ____

ORDER THAT THE WITHIN CASH BAIL BE REFUNDED

Date City Magistrate

Refund Number Court Clerk

Complaint prepared by ____

Exam. Waived MAY 3 1962 19 •

Exam. Begun ____ 19 ____

Exam. Closed ____ 19 ____

ORDER

There being no sufficient cause to believe the within-named

guilty of the offense within mentioned, I order h to be discharged.

Dated, ____ 19 ____

City Magistrate, City of New York

It appearing to me by the within depositions and statements that the crime therein mentioned has been committed, and that there is sufficient cause to believe the within named defendant

EXAMINATION WAIVED

guilty thereof, I order that he be held to answer the same, and that he be admitted to bail in the sum of $ BC.

and be committed to the Commissioner of Correction of the City of New York until he give such bail.

Dated, MAY 3 1962 19 ____

[signature]

CB

Court of Special Sessions

THE CITY OF NEW YORK

BOROUGH OF BROOKLYN

THE PEOPLE OF THE STATE OF NEW YORK

Plaintiffs

against

HENRIETTA TOLIVER

Defendant

The District Attorney of the County of Kings, by this information accuses the defendant of the crime of RESISTING PUBLIC OFFICER IN THE DISCHARGE OF HIS DUTY, committed as follows:

The defendant, on or about April 28, 1962, in the County of Kings, wilfully resisted, delayed and obstructed a certain public officer, to wit ARTHUR MATZEL a Police Officer of the Police Department of the City of New York, in discharging and attempting to discharge a duty of his office, in that the defendant did get between the officer and his prisoners, and the defendant attempted to get the prisoners away from the officer.

Brooklyn, N.Y. May 8th, 1962

Edward S. Silver

DISTRICT ATTORNEY

OFF. ARTHUR MATZEL
81ST PCT

22

9

55

16

James C. A. Hennessy

JAMES C. A. HENNESSY, COURT CLERK
CRIMINAL COURT OF THE CITY OF NEW YORK
PURSUANT TO SEC. 23, NYC CRIMINAL COURTS ACT

1962 SPEC

COURT OF SPECIAL SESSIONS OF
THE CITY OF NEW YORK
COUNTY OF KINGS PART 3

THE PEOPLE OF THE STATE OF NEW YORK
FOR SENT NO

HENRIETTA TOLIVER Cash Bail

522 MC DONOUGH ST

ORDERED REFUNDED

Information RESISTING OFFICER

Filed MAY 9 1962

COUNSEL

Office Address

ADJOURNMENTS:

PEOPLE	DEFENSE	CONSENT
	11-13	
Cal	11/23	
12/19-	Perm*	

MAY 16 1962

MAY 16 1962 - CAL NO 22
GLOWA

DEFENDANT PLEADS NOT GUILTY

NOV 23 1962 SPEC 9

WALLACH, P.J.

12/19 - Per. Perempt.

Presiding Justice

DEC 19 1962 E-CAL

Halford

12/19 Ltr. DA

After trial, defendant found guilty.

Offered Record Cal

1/9/63 BC

EP

E. DEGRADY

JAN 9
GLOWA

$100 FINE, OR 30 DAYS

Court Reporter
H. BLOOM

Presiding Justice

FINE PAID
ENTERED
IN FINE BOOK
PAGE 23
#12357
JAN 9 1963

CRIMINAL COURT OF THE CITY OF NEW YORK
KINGS PART 2A BOROUGH OF BROOKLYN

. . . . . .

People of the State of New York
on the complaint of :

Ptl. Arthur Matzel :

vs : Docket 9994

Henrietta Toliver :

. . . . . .:

Before Hon. Joseph E. O'Grady,
Judge.

Charge: Violation of Sec. 1851 Penal Law.

Trial: 19 December 1962.

A p p e a r a n c e s:

Albert Sclafani, Asst. District Attorney,
For the People.

Louis J. Walker, 129 Schermerhorn St.,
Brooklyn 1, NY.,
Attorney for the defendant.

Reuben A. Duskis,
Official Court Reporter.

. . . . .

MR. SCLAFANI: (calls) Docket 9994, Henrietta Toliver, charged with resisting an officer.

Ptl. Arthur M a t z e l, shield 18608, 81st precinct, the complainant, being duly sworn, testified as follows:

THE COURT: State your name, shield number and assignment for the record, please.

THE WITNESS: Ptl. Arthur Matzel, shield 18608, 81st precinct.

DIRECT EXAMINATION

QUESTIONS BY MR. SCLAFANI:

Q Officer, were you in uniform and on duty on April 28, 1962?

A Yes, sir.

Q About 9:25 PM that date, did you have occasion to be at Patchen Ave. and McDonough St., Kings County, in the City and State of New York?

A Yes, sir.

Q And did you place this defendant, Henrietta Toliver, under arrest at about 9:25 PM on that day?

A Yes, sir.

Q State to the court the circumstances of the arrest.

A As I was placing a prisoner into the sector car,

the defendant stepped between me and the prisoner and started to pull on the prisoner. I told her to leave the prisoner alone and she would not, she kept on pulling. I told her again to leave the prisoner alone or I would have to arrest her for interfering and she would not leave the prisoner alone and I placed her under arrest.

Q Did you take her to the station house?

A Yes.

Q Did you have a conversation with her?

A Yes, sir.

Q What was that conversation?

A I asked her her name and everything, I asked her her name and address.

Q This prisoner you were putting under arrest, do you know if there was any relationship between the prisoner and this defendant?

A I don't know for sure.

MR. SCLAFANI: Your witness.

CROSS EXAMINATION

QUESTIONS BY MR. WALKER:

Q What's the name of this prisoner you were placing under arrest?

A Henrietta Toliver.

(witness: Ptl. Matzel, ~~direct~~ cross)

Q No, the prisoner you say you were placing under arrest when this defendant pulled on his arm or her arm.

A Daughtry.

Q Was it Herman Daughtry?

A Yes.

Q You arrested Daughtry?

A Yes.

Q There was a trial had on his case?

A Yes.

Q What was the result of his trial?

MR. SCLAFANI: Objection.

THE COURT: Objection sustained.

MR. WALKER: May I be heard? The question of the validity of the arrest....

THE COURT: I don't think it's the best evidence as to the disposition of the case.

Q (By Mr. Walker) Were you present when the case was heard?

THE COURT: I don't think it's the best evidence.

MR. SCLAFANI: If Your Honor please, he was only a witness.

THE COURT: I still don't think that the officer's testimony is the best evidence.

(witness: Ptl. Matzel, cross ~~direct~~)

MR. WALKER: All right, I'll produce Herman Daughtry to testify.

THE COURT: I don't think that's the best evidence. The record of the court as to the disposition is the x best evidence of what happened in the court. You are trying to do it by indirection. Do you object to this, counseler?

MR. SCLAFANI: Yes, sir.

MR. WALKER: I will ask the court to declare a mistrial. I think it is germane to the issue.

THE COURT: I don't say that it is not germane to the issue.

MR. WALKER: The entire issue is whether the arrest was legal.

THE COURT: That's another point, too.

MR. WALKER: I think that the court should take any evidence as to whether there was any legality to the arrest.

THE COURT: Wait a minute, you're asking this witness to testify to a disposition of a formal proceeding in a court. You know you prove that by a certified copy of the disposition of the case, not by the oral testimony of this witness.

(witness: Ptl. Matzel, cross)

MR. WALKER: I understood, Your Honor, that the testimony of the arresting officer who knows the disposition....he's a public officer,and, as a matter of record, he knows what transpired in the case.

THE COURT: The district attorney objects to his statement. It's not the best evidence as far as I'm concerned. I'm willing to be convinced to the contrary if you have any authority.

MR. SCLAFANI: If Your Honor please, Your Honor can take judicial notice of the fact on a certified copy of the official record of this court, but you can't take judicial notice of the statement of the witness as to what occurred in another trial and the disposition of that trial is part of what happened at that trial.

MR. WALKER: Nobody would know better the disposition of the case than the officer himself.

THE COURT: That doesn't necessarily follow. That's not the best evidence. The best evidence is a certified copy of the disposition of the case.

MR. SCLAFANI: And that's available, Your Honor, right in this building.

THE COURT: No reason why it should not be

available; it's right in this building.

MR. WALKER: It seems to me, in the interests of justice, when the court has before it such evidence as the officer can give, in order to avoid a declaration of a mistrial in the case, I think----

MR. SCLAFANI: I'll withdraw my objection in the interests of justice, Mr. Walker.

MR. WALKER: All right.

Q Officer, will you tell us, after you made the arrest, whether your case against Herman Daughtry was tried before the court?

A Yes, sir.

Q Were you present and did you testify in that trial?

A Yes.

Q Were you present when the judge rendered his decision or verdict?

A Yes, sir.

Q Tell the court what the verdict was.

A Dismissed, reasonable doubt.

Daughtry trial (white one)

THE COURT: I beg your pardon?

THE WITNESS: Dismissed, reasonable doubt.

Q (By Mr. Walker) Not Guilty---is that correct?

MR. SCLAFANI: No, no!

(witness: Ptl. Matzel, cross)

THE WITNESS: I said Dismissed, reasonable doubt.

Q (By Mr. Walker) Dismissed, reasonable doubt... Herman Daughtry is the nephew of this defendant---is that correct?

THE COURT: What's the answer, "Dismissed, reasonable doubt"?

THE WITNESS: The answer was: Prima facie formed; reasonable doubt, dismissed.

THE COURT: This is what you are trying to do out of the mouth of the police officer.

Q (By Mr. Walker) You know, as a matter of fact, 'reasonable doubt' means Not Guilty?

MR. SCLAFANI: Objection, Your Honor.

THE COURT: Objection sustained.

MR. WALKER: That's all, I have no further questions.

MR. SCLAFANI: Officer, step down. People's case.

MR. WALKER: I move to dismiss on the ground the People failed to prove enough evidence to hold this defendant on the crime charged.

THE COURT: Motion denied.

MR. WALKER: Exception. (to defendant) Take the witness stand.

Henrietta T o l i v e r, defendant, 522 McDonough St., Brooklyn, NY., being duly sworn testified as follows:

THE COURT: Your name, please?

THE WITNESS: Henrietta Toliver.

THE COURT: Where do you live?

THE WITNESS: 522 McDonough St., Brooklyn.

DIRECT EXAMINATION

QUESTIONS BY MR. WALKER:

Q Mrs. Toliver, are you related to Herman Daughtry?

A Yes, I am.

Q Is that the person referred to by the officer as the one he was arresting on the night he arrested you?

A Yes.

Q Tell the judge what happened just before this officer placed you under arrest. Speak up loud.

A I was on my way back from the laundry when I came out of the laundry and met my nephew and several other boys where Ptl. Matzel had a night stick and gun in his hand. I went over to the police officer and I asked him what was the matter. He told me to mind my business. I said that was my nephew and I wanted to find out what was the matter. I didn't go near him and

who

(witness: defendant, direct)

in about three or four seconds the siren of police was coming. The police officer struck my nephew in the head with his night stick and I started screaming. At that time several other police officers came and started hitting on me, forcing me into the car. At that time my skirt fell down and I bent to pick up my skirt and Ptl. Matzel and some other police officers began to beat on me. Another police officer came over to the car and he told them to stop. At that time I picked up my skirt and I put it on. My blouse was already torn off me. We were taken to the 81st precinct, where I was handcuffed to a pole and beaten to the floor by Ptl. Matzel and another police officer, and the other police officers, about a dozen of them, beat my xxxxx nephew up.

Q Did you pull on this officer's arm at any time?

A No, I did not. He had a night stick and gun in his hand and I wasn't going near him.

Q Did you try in any way to interfere with his arresting Herman Daughtry?

A No, all I asked him was the question: "What's the problem"?

Q How old are you?

A I'm 32 years old.

(witness: defendant, direct)

Q Are you single or married?

A I'm married.

Q Any children?

A Six.

Q Have you ever been convicted of a crime? | not true

A No.

MR. WALKER: You may enquire.

CROSS EXAMINATION

QUESTIONS BY MR. SCLAFANI:

Q When you approached the officer, you say he had his gun out and he had a stick in his hand?

A Yes.

Q Were there any other officers around?

A At the time when he pulled his gun?

Q You said when you first saw the officer he had a gun in his hand?

A A gun and a night stick in his hand.

Q You don't know when he pulled his gun, do you?

A I came out of the laundry and met him out with his----

Q (int'g) Will you please answer the question. I asked you:You don't know when he pulled the gun out?

A No.

Q When you first saw him, he had his gun in his hand, is that right?

(witness, defendant, cross)

A Yes.

Q And your nephew was there---is that right?

A Yes.

Q Was your nephew up against a wall?

A Yes.

Q Was there anyone else up against the wall?

A Several other boys besides him.

Q What time was this?

A That was about a quarter to nine.

Q In the evening?

A Yes.

Q What street was this?

A On the corner of McDonough and Patchen.

Q And that's a pretty traversed area at that time, isn't it?

A Not at the time.

Q Were there other people watching?

A Yes.

Q How many people would you say were there?

A I'll say about maybe a dozen or more.

Q And they were all watching this---is that right?

A Yes.

Q You went over to the police officer---is that correct?

A Yes.

(witness: defendant, cross)

Q And you said something to him about your nephew?

A Yes, I asked him---

Q (int'g) And he told you to step aside?

A He told me to mind my business.

Q What did you do?

A I stepped aside.

Q When you stepped aside, how far away from the officer did you step?

A From where ~~im~~ you are to where I am.

MR. WALKER: May the record show about eight feet.

Q (By Mr. Sclafani) About eight feet?

A Yes.

Q Where were the others, other than yourself?

A They were aside from the officer, too.

Q Were you near the other dozen people watching?

A Yes.

Q You were in that crowd?

A Yes.

Q And you were looking at what was going on?

A Yes.

Q Then the police cars came?

A Yes.

Q And the police got out of the cars?

(witness: defendant, cross)

A Yes, they did.

Q And they came over to you?

A No.

Q What happened?

A The patrolman struck my nephew in his head with his night stick and I started to scream. Some police officer came out of the car and I was still screaming and they were pushing me inside the car. At that time the patrolman had my nephew in another car and he came over, he and another officer began to beat on me with my skirt falling on the street.

Q When you started to scream, was the patrolman out of the car at that time? When you started to scream, was the patrolman out of the car at that time or was he still in the car?

A Which patrolman are you talking about?

Q The patrolman that came over and struck you.

A I don't follow you.

Q You said you started to scream, at which point----

A (int'g) When the police struck my nephew, that's when I started to scream.

Q Then you said a policeman got out of the car...

A Yes, x he never struck my nephew until the sirens of police came and I was screaming when they came and the police officers tried to push me in the car.

(witness: defendant, cross)

Q Will you answer my question? Take it easy....

THE COURT: The question is: When he struck your nephew, you were about eight feet away at that time?

THE WITNESS: Yes.

THE COURT: You say you started to scream?

THE WITNESS: I started to scream.

THE COURT: Did you go over and grab hold of the officer?

THE WITNESS: No, I did not.

THE COURT: Did you attempt to stop him from striking your nephew?

THE WITNESS: No.

THE COURT: You just stood there and screamed?

THE WITNESS: I started to scream, yes.

BY MR. SCLAFANI:

Q Then you say the sirens of police pulled up?

A Yes.

Q And when they pulled up, you were still screaming?

A That's correct. He never struck----

Q (int'g) Just answer the question. And then a police officer got out of the car that had just pulled up and came over to you and struck you?

A No.

Q Is that right?

A No. I'm trying to tell you. I said I was

screaming. The police officer never struck my nephew until he heard the sirens of police.

THE COURT: That's when he struck him?

THE WITNESS: Yes, and I started screaming.

THE COURT: You started screaming. Who hit you then?

THE WITNESS: The patrolman Matzel and another police officer which I don't know.

THE COURT: You say after he struck your nephew and after you started screaming you didn't try to stop the officer from hitting your nephew?

THE WITNESS: No.

THE COURT: You didn't interfere with him at all?

THE WITNESS: No, I did not.

THE COURT: And,because you were screaming, they came over and hit you with the club?

THE WITNESS: I was screaming and the police officer asked me what I was screaming about and I told him this policeman had beaten up my nephew and they were pushing me inside the car. At that time the patrolman put my nephew in the first car---

(witness: defendant, cross)

BY MR. SCLAFANI:

Q (int'g) No, let's not get that far. The police officer came over and spoke to you when you started screaming---is that correct?

A Not this police officer. (Matzil)

Q Another police officer?

A Yes.

Q What did he say to you?

A He asked me What was I screaming about? and I told him the police officer was beating my nephew up.

Q Then what happened?

A He told me to get inside the car.

Q What else did you say to the police officer?

A I didn't say anything to him.

Q Did you push him?

A No, I did not. He was pushing on me and tore my blouse off.

Q You were protesting about your nephew being hit, weren't you?

A No.

THE COURT: Did he ask you to get into the police car?

THE WITNESS: Yes, he did.

THE COURT: Did you get into the police car?

THE WITNESS: I got in the police car.

(witness: defendant, cross)

THE COURT: Did you get into the police car or did you resist getting into the police car?

THE WITNESS: No, I did not.

THE COURT: You said he was pushing on you. What was he pushing on you for?

THE WITNESS: He was pushing on me to get into the car but my skirt had fallen to the street and I was trying to bend down to pick up my skirt.

BY MR. SCLAFANI:

Q Did you, at any time, call the police officer any names?

A No, I did not.

Q Did you raise your voice to the police officer?

A No, I did not.

Q You said you were screaming and yelling?

A I was screaming in the street.

Q And when the police officer came over, were you still screaming?

A No, I was trying to pull up my clothes.

Q Did there come a time when the police officer told you to step aside?

A No, he did not.

Q Didn't you testify when you went over to the police officer when you first saw him, he said to you

(witness: defendant, cross)

"Step aside"?

A Yes, when I went to enquire.

Q So he did tell you to step aside?

A Yes, I did that because he had the gun in his hand.

Q Did any police officer come to you and tell you to stop screaming, you are creating a disturbance?

A A police officer asked me why was I screaming.

Q When the police officers came out of the car, after you heard the siren, did they go over to assist the police officer Matzel who had your nephew and the other boys up against the wall?

A Yes.

Q And some of them came over to you because you were screaming---is that correct?

A That's correct.

Q But they didn't go over to anybody else in that crowd---is that correct?

A I was the only one screaming out there.

Q So that these officers that got out of the car and came over to you didn't go over to assist officer Matzel in the arrest, they came to you because you were screaming---is that correct?

A Yes, other officers went to Matzel.

(witness: defendant, cross)

MR. SCLAFANI: That's all.

MR. WALKER: (calls) Herman Daughtry.

Herman D a u g h t r y, 522 McDonough St., Brooklyn, NY., called as a witness for the defense and being duly ~~xxx~~ sworn testified as follows:

THE COURT: State your name and address for the record, please.

THE WITNESS: Herman Daughtry, 522 McDonough St., Brooklyn.

THE COURT: What is your business or occupation?

THE WITNESS: ~~x~~ I'm a shipping clerk.

DIRECT EXAMINATION

QUESTIONS BY MR. WALKER:

Q Have you ever been convicted of any crime?

A No, I haven't.

Q I don't hear you.

A No, I haven't.

Q Mrs. Toliver, the defendant in this case, is she a relation of yours?

A Yes, she's my aunt.

Q The night of this trouble, did you see her?

A I don't understand.

Q Did you see your aunt the night you were arrested?

(witness: Mr. Daughtry, direct)

A Yes.

Q Tell the judge what happened,that you saw, between the police and your aunt.

A When I first saw her was before the officer hit me. Then when he hit me and I spun around, I saw----I started to head towards home and I fell down by a car and I was blurred and all the other police cars came and I heard my aunt say "What's going on?" and somebody kicked me in my chest and I was hit.

Q Did you hear your aunt scream?

A Yes, she was hollering.

Q At any time did you see her place her hands on this police officer that placed you under arrest?

A No, I haven't.

Q You were placed under arrest, charged with disorderly conduct?

A Yes.

Q And also assault?

A Yes.

Q And were those cases both tried in courts of this city?

A Yes, it was.

(witness: Mr. Daughtry, direct)

Q Tell the court whether you were acquitted on both charges, or not.

MR. SCLAFANI: Objection.

A Yes.

THE COURT: I'll allow it.

MR. SCLAFANI: I object to it.

THE COURT: I'll allow it.

MR. SCLAFANI: All right.

MR. WALKER: I have no other questions.

THE COURT: What was the answer to the question: 'acquitted'?

MR. WALKER: On both charges.

CROSS EXAMINATION

QUESTIONS BY MR. SCLAFANI:

Q Do you know what a prima facie case is?

A No, I don't.

Q Do you know what a reasonable doubt is?

A Yes, I do.

Q Do you know whether the judge acquitted you after a prima facie case or after a reasonable doubt?

A Well.....

Q Do you or don't you?

A Will you repeat that again, please?

(witness: Mr. Daughtry, cross)

Q What?

A Could you repeat that again, please?

Q Do you know whether the judge acquitted you after a prima facie case or after a reasonable doubt?

A Will you explain the first word, the first meaning to me?

THE COURT: Do you know what it means?

THE WITNESS: No.

Q (By Mr. Sclafani) So you can't tell this court.... Can you tell this court, Yes or no?

A I know that he didn't dismiss me on reasonable doubt.

Q Do you know if he dismissed you on the prima facie case?

A Only thing I know is that he dismissed me on evidence, when he knew the facts, and you can judge the facts from there.

Q On the day in question, the officer had you up against a wall, didn't he?

A Yes, at the curb.

Q And your face was towards the wall?

A No, it wasn't.

Q Was it facing the officer?

A Yes, it was.

Q When did you first see Mrs. Toliver?

A Before the officer hit me.

(witness: Mr. Daughtry, cross)

Q Before the officer hit you?

A Yes.

Q When you first saw your aunt, where was she? How far away from you was she?

A When I first seen her she was coming across the street.

Q She was coming across the street?

A When I first saw her.

Q Were there any people around you?

A When he put us against the wall, people started coming around.

Q Do you recall how many people?

A At the present time when he first put me there?

Q Yes.

A About a dozen or more.

Q When your aunt walked over, what did she do?

A When she walked over, the officer had already hit me.

Q What?

A When she walked over, when she got to where I was,about,I would say,on the same side of the street, the officer had already struck me.

Q She hadn't talked to the officer before the

officer struck you---is that correct?

A She was coming across the street.

Q Did you ever see her talking to the officer?

A That night?

Q After she came across the street, did you see her talk to him? After she came across the street after he struck you, did she talk to the officer?

A I heard her ask what was going on.

Q Then what happened? What did the officer say?

A Like I said, I don't know exactly what happened. I heard when she asked him what was going on----She came over there and she asked what was going on and the officer struck me, then he struck me again, then I heard a noise and I spun around and I started to go towards home and I got on the corner and fell down by the car and at this time all the police cars had come up, about three or four squad cars had come.

Q Didyou hear the siren?

A Do I hear it?

Q Yes.

A Just before he hit me.

Q When he hit you the first time as your aunt was crossing the street, was there any siren going then?

A Yes.

(witness: Daughtry, cross)

Q There were sirens at that time?

A Yes, they were on my block, about midway of the street I live on.

Q And then you were struck for the first time?

A Yes.

Q Then your aunt went over to the police officer?

A She hollered What was going on?.

Q How far away from the police officer was she?

A I don't know.

Q What?

A I don't know.

Q You were closer to the police officer than you were to your aunt, weren't you?

A Me?

Q Yes.

A Yes.

Q What did you hear the police officer say to your aunt when she said What was going on?.

A I think he said "Get back", and hit me again.

Q Did your aunt get back?

A I said he hit me again, I don't know...I spun around, I headed towards home and I fell down in front of a car.

Q And were you there when the police officers,

the other police officers came over and went over to your aunt?

A Was I there? Yes.

Q Did you see what happened?

A I seen one grab her.

Q Where were you---on the ground?

A On the ground, getting up.

Q And somebody had kicked you?

A Yes, I was kicked in my chest.

Q Did you know what was happening at that point?

A What do you mean---do I know I was kicked?

Q Did you know what was happening between your aunt and the police officer at that point? Did you know what was happening between your aunt and the police officer at that point, while you were down and somebody was kicking you?

A No.

Q No. Did you hear your aunt screaming?

A Yes, I heard my aunt scream.

Q What was she screaming? What was she saying?

A I don't know what she was saying.

Q Was she screaming loud enough for you to hear her?

(witness: Daughtry, cross)

A She was screaming loud enough for anyone to hear her.

Q Did you hear what she was screaming?

A I heard her scream; I don't know what she was screaming.

Q Did she call the police officers any names?

A I heard her scream, I don't know what she was screaming.

A How close to you and the other boys that were up against the wall was your aunt when she was screaming?

A When she first walked over she asked what was going on. When she was screaming I was on the corner with a lot of people I don't know how close.

Q Did she go towards you and the police officer that had the gun on you after she started screaming?

A Well....

Q Did she?

A No, she didn't.

Q She stayed where she was?

A I know she didn't come by him because he had the gun. Nobody came by him.

Q Did she come towards you?

A I didn't see her; I was in a blur.

(witness: Daughtry, cross)

Q So you don't know whether she came to you or not?

A I was blurred, like dizzy.

Q Do you know how many police officers went over to your aunt?

A I know how many police officers were there.

Q How many went over to your aunt?

A I wouldn't know.

Q No further questions.

MR. WALKER: Step down. (calls) Byer.

Morton B y e r, 518 McDonough St., Brooklyn, NY., called as a witness by the defense and being duly sworn testified as follows:

THE COURT: State your name and address for the record, please.

THE WITNESS: Morton Byer, 518 McDonough St., Brooklyn.

DIRECT EXAMINATION

QUESTIONS BY MR. WALKER:

Q Speak up loudly so we can all hear you. You were present at the time that Mrs. Toliver was arrested?

A Yes, sir, I was.

Q And did you see the officer, who testified on the witness stand, just before he placed her under arrest?

(witness: Mr. Byer, direct)

A Yes. Did I see him testify here?

Q You saw that officer---correct?

A Yes.

Q Tell the judge what you saw happen between him and Mrs. Toliver.

A I was against the wall at the time. The officer---- Mrs. Toliver came from the laundry across the street. The cop had Herman against the wall with the gun and he struck him and she said "What happened? What are you striking him for?". He said "You stay out of this", and the other officer started to come at the time and he struck him again and he fell to the ground,

Q I'm not interested in that. I'm interested in what Mrs. Toliver did. You say she came out of the laundry and went over and said something to the officer--- is that correct?

A Yes.

Q Did he say anything to her?

A He just----he didn't say anything to her. She asked what happened and he said "Stay out of this".

Q What?

A He said "Stay out of this", he said "None of your business, stay out of this".

(witness: Mr. Byer, direct)

Q When he said "Stay out of it", what did she do?

A She said "He's my niece".

THE COURT: Nephew.

THE WITNESS: Nephew.

Q (By Mr. Walker) What happened after she said "He's my nephew"?

A The other officer started grabbing her and striking her.

Q Were you also one of the---

THE COURT: (int'g) You say 'the other officer'?

THE WITNESS: Yes, from the police car.

Q (By Mr. Walker) Did you, at any time, see Mrs. Toliver place her hands on that officer who testified and hold him back from arresting Herman Daughtry?

A No.

Q Later on there was an arrest made of Herman and others?

A That's correct.

Q Were you one of the others arrested?

A Yes.

Q And you were charged with disorderly conduct?

A Yes.

Q What happened to ~~xx~~ your case?

A It was dismissed.

(witness: Mr.BYER, direct)

Q Have you ever been convicted of any crime?

A No.

Q You live in the neighborhood?

A Yes.

Q Are you married?

A Yes.

Q Any children?

A Yes.

Q How long do you know Mrs. Toliver?

A Seven years.

Q Do you know other people in the neighborhood who know her?

A Yes.

Q Do you know what her reputation is in the neighborhood for being a peaceful woman?

A Yes.

Q What is her reputation?

A Good reputation.

MR. WALKER: I have no other questions.

CROSS EXAMINATION

QUESTIONS BY MR. SCLAFANI:

Q Have you ever been convicted of a crime?

A No, never.

(witness: Mr. Byer, cross)

Q Do you know the difference between an acquittal and a dismissal?

A No.

Q When you say the case was dismissed, you don't really know what that means, do you?

A There's evidence, I know that.

Q All right. There was a trial, wasn't there?

A Yes.

Q Now on the day in question, the police officer had you and Daughtry and another person against a wall?

A Yes.

Q Were you facing the wall or facing the officer?

A Facing the officer.

Q And did you have your hands up?

A He told us to get them up and we put them up.

Q How many people were around you at that time?

A When he pulled the gun out, the crowd started to come; cars stopped and everybody started looking.

Q How many people were there?

A I think about 12, 13, 14.

Q Now how long after you were up against the wall did Mrs. Toliver get there?

A It wasn't too long.

Q You saw her crossing the street?

A Yes.

(witness: Mr. Byer, cross)

Q Is that the first time you had seen her in the street?

A No, she was in the laundry the first time and she come out.

Q Did you see her come out of the laundry or in the street?

A I wasn't looking at the laundry, I was looking at the cop, and I see her coming across the street.

Q You don't know where she came from.

A She came from the laundry which is across the street.

Q You don't know whether she came from the laundry, do you?

A No.

Q You didn't know at that time she came from the laundry?

A She said so, didn't she?

Q I'm asking you what you know, not what she told you.

A No, no.

Q When she came towards the police officer, what happened?

A She said "What's going on?".

Q Had the police officer struck Daughtry at that time?

(witness: Mr. Byer, cross)

A He had hit him once already, yes.

Q Already?

A He hit him twice.

Q Were the sirens blowing yet?

A Yes, they started to come.

Q When he was hit the first time there were no---
You didn't hear any sirens then, did you?

A Yes, I heard them.

Q The first time?

A Yes, the first time. The crowd started coming when they heard the siren and everything.

Q As Mrs. Toliver approached the police officer, did the police officer strike the nephew?

A Yes.

Q Daughtry.

A Yes.

Q And she went over to him and said "What's going on?"---is that correct?

A Yes.

Q Did you hear Mrs. Toliver testify that she went over to the police officer and asked what's going on and it was after that conversation that the police officer struck her nephew?

(witness: Mr. Byer, cross)

A He struck him twice.

Q I didn't ask you that. Did you hear her testify to that?

A Yes.

Q Is that the correct sequence of events, what she said or what you said?

MR. WALKER: I object to that, if the court please, it's argumentative.

THE COURT: Objection sustained.

Q (By Mr. Sclafani) When Mrs. Toliver came over to the police officer, did she get in front of the police officer?

A I don't know which way she got.

Q You saw her, didn't you?

A Yes, but I can't remember whether she got in front or in back. I know she just asked the question.

Q Where was she standing in relation to the police officer?

A About from here to here (indicating). She said "What happened? Why are you hitting him?".

Q Did she go near to the police officer?

A Not that close to him but from here to here (indicating).

Q Was she in line with her nephew---between the police officer and her nephew?

(witness: Mr. Byer, cross)

A I don't know, I can't remember.

Q You don't know?

A No.

Q You heard the police officer testify "Step aside"---is that correct?

A Yes.

Q Then what did she say?

A She said "Why? This is my nephew." Then she asked him a question "Why is this going on? What happened?".

Q And what did the police officer say?

A He said "Stay out of it".

Q Did he get fresh?

A No, he said "Stay out of it".

Q What did he say?

A He just said "Stay out of it".

Q Would you say he was nice about it?

A Yes, he was nice about it at the beginning, yes.

Q You say at the beginning?

A Yes.

Q What happened?

A All the officers started to come.

Q Before that was she insisting she wanted to know what was happening?

(witness: Mr. Byer, cross)

A No, she started to scream after he hit him again. He's on the floor bleeding on his head.

Q She asked what's going on and the police officer ~~it~~ said----

A (int'g) At that time the officers started grabbing everybody, they started hitting back and forth. That's all I know.

Q Just answer my questions and eliminate the speeches.

A OK.

Q When Mrs. Toliver came over, the police officer said "Step aside"---is that right?

A Yes.

Q Was he fresh about it?

A No.

Q He was nice about it?

A At the beginning, yes.

Q Did Mrs. Toliver step aside?

A Yes.

Q Where did she go?

A She went near a car and started screaming, after he hit him.

Q Did you hear her scream?

A Yes.

(witness: Mr. Byer, cross)

Q Did you hear what she was screaming?

A No, she was just saying "What's going on?".

Q You didn't hear what she was saying?

A No.

Q What happened after that? Did the crowd start to move?

A The crowd was not that near her.

Q How many police officers were there at the time he had you against the wall and the aunt walked over for the first time?

A Say it again.

Q When you were up against the wall and Mrs. Toliver came over the first time, how many police officers were there?

A One. Just him.

Q And it was later on that another police officer came out of the radio car?

A Seconds.

Q Seconds later on?

A Seconds.

Q Did you see this police officer get out of the radio car?

A Yes.

(witness: Mr. Byer, cross)

Q And what did he do?

A He just grabbed her and hit her.

Q Did he walk over to her?

A Yes, he just grabbed her and hit her.

Q Did he have a conversation with her?

A No, I didn't see no conversation.

Q He got out of the car and went over and started to hit her?

A That's right, they asked no questions. Like a war or something.

Q Did you see that police officer that got out of the car talking to this police officer?

A There was a whole bunch of police officers.

Q Did you see that police officer that got out of the car talking to this police officer?

A No.

Q You say there was no conversation between the police officer that got out of the car and officer Matzel---is that correct?

A I didn't see that.

Q You didn't see that. And the officer got out of the car and went over to Mrs. Toliver for no reason and struck her---is that correct?

(witness: Mr. Byer, cross)

MR. WALKER: Just a minute! I object to this.

THE COURT: Object to the form of the question.

Q (By Mr. Sclafani) Without any conversation, he went over and struck her?

A There was more than one officer. A few went to her and a few came and grabbed us.

Q They went over and some officers went to assist officer Matzel?

A Yes.

Q And the others went to Mrs. Toliver, who was screaming and yelling?

A Yes.

Q And one of them started to hit Mrs. Toliver?

A He hit me and her.

Q Without any conversation?

A That's right. I got a bang on my head.

Q That's all.

MR. WALKER: Will the officer please take the stand.

* Ptl. Arthur Matzel, the complainant, having been previously duly sworn, was recalled to the stand and testified further as follows:

THE COURT: You are still under oath, officer.

(witness: Ptl. Matzel, recross)

RECROSS EXAMINATION

QUESTIONS BY MR. WALKER:

Q Officer, when Mrs. Toliver came over to you at the point when she crossed the street, did you have your gun in your hand?

A When she first came over to me?

Q Yes.

A When she came over to me I didn't have a gun in my hand.

Q Did you have your night stick in your hand?

A Yes.

Q Had you struck Herman Daughtry prior to the time she asked you what you were doing, what you were arresting him for?

MR. SCLAFANI: Objection. There is no evidence by this police officer that he struck.

MR. WALKER: I withdraw the question.

Q Did you strike Herman Daughtry with your night stick?

A Yes.

Q How many times did you hit him?

A Three times.

Q Did you hit him in the presence of Mrs. Toliver?

A Yes.

(witness: Ptl. Matzel, recross)

Q Did you hit him in the head?

A Yes.

Q Did you knock him down?

A Yes.

MR. WALKER: That's all. Defendant's case.

MR. SCLAFANI: People rest.

MR. WALKER: On all the evidence before the court, if Your Honor please, I move to acquit the defendant on the ground there is a reasonable doubt as to her guilt.

THE COURT: Motion denied. The defendant is found guilty.

MR. WALKER: Exception, Your Honor.

THE COURT: Officer and record, what date?

MR. SCLAFANI: Two weeks, Your Honor.

MR. WALKER: Make it January 9th.

THE COURT: Officer and record, January 9th.

PTL. MATZEL: Do I have to appear that day?

THE COURT: Yes, January 9, 1963.

MR. WALKER: Will Your Honor hold the date up, please? Maybe the officer can't be here.

THE COURT: I don't think he's got his schedule.

PTL. MATZEL: That's true.

MR. WALKER: 1B?

THE COURT: The defendant is on cash bail, isn't she?

MR. WALKER: Yes.

THE COURT: Bail continued.

MR. WALKER: 1B, Your Honor? This goes back to 1B.

THE COURT: This goes back to wherever it came from. It goes back to 1B.

PTL. MATZEL: That's January 9th, Your Honor?

THE COURT: January 9th, part 1B.

. . . . .

Certified true and correct.

Official Court Reporter.

CRIMINAL COURT OF THE CITY OF NEW YORK

PART 1B : COUNTY OF KINGS

THE PEOPLE OF THE STATE OF NEW YORK	: Docket No. 9994
	: Charge:
vs.	
HENRIETTA TOLIVER,	: Resisting an Officer
Defendant	:

120 Schermerhorn Street,
Brooklyn 1, New York

January 9, 1963

B E F O R E:

Hon. Ludwig Glowa,
Judge, Criminal Court

A P P E A R A N C E S:

For the People:

S. Rametta, Esq.,
Assistant District Attorney
County of Kings

For the Defendant:

Louis Walker, Esq.,
129 Schermerhorn Street,
Brooklyn, New York

Harry Bloom,
Official Court Reporter

COURT OFFICER: Number 16 on the calendar; Docket Number 9994, Henriette Toliver.

The defendant is represented by Louis Walker, 129 Schermerhorn Street, Brooklyn, New York.

THE COURT: Is the defendant ready for sentence?

MR. WALKER: Yes, your Honor.

THE COURT: The defendant was found guilty on a charge of resisting arrest -- I'm sorry -- resisting an officer in the performance of his duties. Her prior record, July of 1948, disorderly conduct, and she was fined. In March of 1949, she was charged with forgery and she went to jail. In 1959 she was charged with assault and robbery, and she was acquitted. Do you have any legal cause why sentence should not be pronounced?

MR. WALKER: No, your Honor.

THE COURT: Do you wish to say anything in her behalf?

MR. WALKER: Yes, judge. The officer was making an arrest when she got between the officer and the prisoner. In this case, it happened to be her nephew and she was coming out of a tailor shop and she heard some screams and she went over and lost control of herself. I respectfully ask your Honor to be as lenient as possible.

THE COURT: One hundred dollars or thirty days.

COURT OFFICER: You may communicate with friends or relatives from the office of the warden.

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I certify that the foregoing is a true and accurate transcript of the minutes.

Harry Bloom

Harry Bloom
Official Court Reporter

CRIMINAL COURT OF THE CITY OF NEW YORK
PART 2A : COUNTY OF KINGS

- X

THE PEOPLE OF THE STATE OF NEW YORK,

Plaintiff,

NOTICE OF APPEAL

-against-

HENRIETTA TOLIVER,

Defendant.

- X

S I R S :

PLEASE TAKE NOTICE that the defendant herein, HENRIETTA TOLIVER, appeals to the Appellate Term of the Supreme Court of the State of New York held in and for the Second Judicial Department from a judgment convicting her of violation of section 1851 of the Penal Law of the State of New York by the Honorable Joseph E. O'Grady, on the 19th day of December, 1962, and from the sentence imposed therein by the Honorable Ludwig Glowa on the 9th day of January, 1963, sentencing the defendant to pay ONE HUNDRED AND 00/100 ($100.00) DOLLARS or thirty (30) days, and from each and every part thereof.

Dated: New York, New York
February 6, 1963.

Yours, etc.,

VLADECK & ELIAS
Attorneys for the Defendant
Office & P. O. Address
280 Broadway
New York 7, New York

TO: HON. EDWARD S. SILVER
District Attorney of
Kings County

CLERK OF THE CRIMINAL COURT
OF THE CITY OF NEW YORK
Kings County

CRIMINAL COURT OF THE CITY OF NEW YORK
PART 2A : COUNTY OF KINGS

- -X

PEOPLE OF THE STATE OF NEW YORK,

Plaintiff,

-against-

HENRIETTA TOLIVER,

Defendant.

- -X

S I R S :

PLEASE TAKE NOTICE that we have been retained by and appear for the defendant in the above entitled action and hereby demand that copies of all papers in this action be served upon us at our offices.

Dated: New York, New York
February 8, 1963

Yours, etc.

VLADECK & ELIAS
Attorneys for the Defendant
Office & P. O. Address
280 Broadway
New York 7, New York

TO: HON. EDWARD S. SILVER
District Attorney of
Kings County

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE TERM: COUNTY OF KINGS

The People of the State of New York

plaintiff-respondents

vs.

Henrietta Toliver

defendant-appellant

SIRS:

PLEASE TAKE NOTICE that the appeal in the above entitled action will be brought on for argument before the Appellate Term of the Supreme Court, County of Kings, at the Courthouse thereof, located at Civic Center on the 3rd day of September, 1963, at 10:00 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard.

Dated: August 21, 1963

Yours, etc.,

VLADECK & ELIAS
Attorneys for defendant-appellant
Office & P.O. Address
280 Broadway
New York 7, N.Y.

To:

Hon. Frank A. Cunningham
Clerk of the Appellate Term

Hon. Edward S. Silver
District Attorney of Kings County

RECEIVED
1963 AUG 22 AM 9:04
DISTRICT ATTORNEY
KINGS COUNTY, N.Y.

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE TERM: COUNTY OF KINGS

- X

The People of the State of New York

plaintiff-respondents

vs.

Henrietta Toliver

defendant-appellant

- X

DEFENDANT'S BRIEF

STATEMENT

This is an appeal by the defendant, Henrietta Toliver, from a conviction finding her guilty of violating Penal Law Section 1851, and sentencing her to pay either a fine of $100.00 or serve thirty days.

The defendant, Henrietta Toliver, was arrested shortly after 9:00 P.M. on April 28, 1962 for allegedly violating Penal Law Section 1851. She was accused of resisting a public officer in the discharge of his duty (A.p.2)[1].

That Section provides as follows:

> "A person who, in any case or under any circumstances not otherwise specially provided for, wilfully resists, delays, or obstructs a public officer in discharging or attempting to discharge, a duty of his office, is guilty of a misdemeanor."

The defendant was arraigned in City Magistrates' Court of the City of New York, Night Court, Borough of Man-

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1- "A" refers to page of minutes at defendant's arraignment.

hattan, on April 28, 1962 before Hon. Walter Bayer. Bail was set at either a five-hundred ($500.00) dollar bond or twenty-five ($25.00) dollars cash. (A.p.6)

At the trial in Criminal Court of the City of New York, County of Kings, Part 2A, Borough of Brooklyn, on December 19, 1962, before Hon. Joseph E. O'Grady, the defendant was found guilty of violating Penal Law Section 1851, (T.p.43)[2]. No opinion was rendered. No application for a Certificate of Reasonable Doubt was made. Mrs. Toliver was sentenced in Criminal Court of the City of New York, Part 1B, County of Kings, on January 9, 1963 by Hon. Ludwig Glowa to pay a fine of one-hundred ($100.00) dollars or serve thirty days, (S.p.3)[3]. The defendant paid the one-hundred ($100.00) dollar fine imposed on January 9, 1963 in Criminal Court of the City of New York, County of Kings, Part 1B; receipt #12,357 on on page 73; docket #9994.

FACTS

On the evening of the arrest the defendant, who resides at 522 McDonough Street, Brooklyn, New York, was in a laundry near the intersection of McDonough Street and Patchin Avenue, Brooklyn, New York. She was attracted by a crowd across the street near the same intersection and then saw several boys lined up against the wall of a store, one of whom

2-"T" refers to page of minutes at defendant's trial.
3-"S" refers to page of minutes at defendant's sentencing.

was her nephew, Herman Daughtry (T.p.9)

Mrs. Toliver noticed that Patrolman Matzel, who was detaining her nephew and the other boys, was armed with a night stick in one hand and a gun in the other (T.p.9). She approached the officer to find out what the trouble was and was told to mind her own business. (T.p.9). Mrs. Toliver identified herself to the policeman as Daughtry's aunt and again inquired what the trouble was, but received the same answer.

Within seconds of her questions, she heard sirens from approaching police cars. At that moment Patrolman Matzel struck Daughtry on the head with his night stick; Mrs. Toliver began screaming (T.p.10; p.14). While she was screaming, other police cars arrived; a policeman from at least one of those cars, using force, pushed Mrs. Toliver inside. During the course of the latter incident her blouse was torn off and her dress fell to the ground. She was continually beaten by a policeman, not only when she bent down to retrieve her dress, but while in route to the 81st precinct for booking and also while in the custody of policeman at the precinct station.

The testimony elicited from the arresting officer, Patrolman Matzel, confirms the beating of Herman Daughtry. In fact, on re-cross examination he stated he hit Daughtry three times in the presence of the defendant (T.p.42); at least one of the blows was to the head knocking Daughtry to the ground (T.p.43). Significantly, Matzel was not asked by the District

Attorney why he beat Daughtry.

Moreover, while Matzel states that he didn't have his gun drawn at the time defendant came from the laundry across the street, he did not deny that at some point his gun was in fact drawn (T.p.42).

Although this brief will demonstrate in some detail that the defendant should have been acquitted of the specific charge on the facts alone, a more important legal consideration is submitted. The defendant's nephew, Herman Daughtry, after being charged with Disorderly Conduct and Assault, Third Degree, for his alleged acts on the 28th of April 1962, was acquitted of both charges. (Exhibits "A" & "B").

OUR CONTENTIONS

We respectfully contend:

1. The arrest of a person for a misdemeanor is unlawful per se when that person is acquitted of the charge against him.
2. It is not a violation of Penal Law Section 1851 for an individual to aid the victim of an unlawful arrest.
3. The facts surrounding defendant's arrest do not constitute a violation of Penal Law Section 1851.

POINT I

THE ARREST OF A PERSON FOR A MISDEMEANOR IS UNLAWFUL PER SE WHEN THAT PERSON IS ACQUITTED OF THE CHARGE AGAINST HIM

It is submitted that where a person is arrested and charged with committing a misdemeanor, that arrest in New York

State is unlawful, as a matter of law, in the event that the accused is subsequently acquitted of the charge.

In People v. Dreares, 15 App. Div. 204 (1st Dept. 1961), affirmed 11 N.Y. 2d 906, (1962), the defendant was acquitted of the charge of loitering but convicted of assault in the 3rd degree upon the arresting officer when resisting arrest under the former charge. In reversing the lower court's conviction, the Appellate Division, in an opinion by Presiding Justice Breitel, said (p.206):

> "The prior acquittal for loitering, which is not disputed, is determinative that defendant was not guilty of the underlying offense for which he was arrested. (e.g., 2 Freeman, Judgments (5th ed.), § 648; Doctrine of Res Judicata in Criminal Cases, Ann. 147 A.L.R. 991; 50 C.J.S., Judgements, § 754; People v. De Sisto, 27 Misc 2d 217, 236-249; People v. Walker, 25 Misc 2d 942, 944; Parrott v. Commonwealth, 287 S.W. 2d 440 (Ky.)). This follows from and is simply a special application of the principal that as to each element in a criminal case, and not only on the whole case, the People must establish guilt beyond a reasonable doubt (1 Wharton, Criminal Evidence (12th ed), § 16).
>
> "Such acquittal, then, raises the issue as to the lawfulness of the arrest in which defendant forcibly resisted the transit officers. The rule in this State is that an arrest without a warrant for an offense less than a felony must be posited upon the actual commission of the crime or offense in the presence of the arresting person (Code Crim. Proc., §177; Stearns v. Titus, 193 N.Y. 272,275). Defendant's prior acquittal of the crime for which he was arrested consequently established the arrest to have been unlawful, and he was therefore entitled to resist such an arrest

with reasonable force (People v. Cherry, 307 N.Y. 308)." (emphasis added)

In a recent decision, People v. Isaac, 239 N.Y.S. 2d 624, (not officially reported) (Sup., Queens, Special and Trial Term, Part XXX 1963) Justice Sarafite said (p.627):

> "In the Dreares case, it was held that an acquittal on a charge of loitering established that the crime had not been committed, and that the arrest for that crime, a misdemeanor, was thus illegal under Code of Criminal Procedure Section 177, thereby giving the person arrested the right to resist the arrest."

The law in New York protects persons in this State from the unlawful arrest of a misdemeanor to the extent that a public officer or private citizen making the arrest acts at his peril. See Gill v. Montgomery Ward & Co., 284 App. Div. 36 (3rd Dept. 1954), where the court, in an opinion by Justice Halpern, stated (p.40):

> "The arrest was for a misdemeanor at most and an arrest for a misdemeanor either by a private person or a peace officer without a warrant is made at the peril of the person making the arrest. Good faith is no excuse in an action for false imprisonment, if an innocent person is mistakenly arrested without a warrant on a charge of a misdemeanor. (Code of Crim. Pro., §§177, 183; McLoughlin v. New York Edison Co., 252 N.Y. 202)." (Emphasis added).

See also People v. Tinston, 6 Misc. 2d 485 (1957)

That the principle being discussed is correct finds support in changes to the Code of Criminal Procedure. Formerly, and at the time we are concerned with in this appeal,

Chapter IV of the Code of Criminal Procedure, entitled ARREST BY AN OFFICER, WITHOUT A WARRANT, provided, in part:

"§ 177. In what cases allowed

A peace officer may, without a warrant, arrest a person,
1. For a crime, committed or attempted in his presence;..."

The remaining clauses in the above section (177) refer to felonies only. Significantly, Criminal Code Section 177 was amended by Laws of New York 1963, Chapter 580, which provides:

"Section 1. Subdividion one of section one hundred seventy-seven of the code of criminal procedure, as amended by Chapter nine hundred forty-two of the laws of nineteen hundred sixty, is hereby amended to read as follows:

1. For a crime, committed or attempted in his presence, or where a police officer as enumerated in section one hundred fifty-four-a of the code of criminal procedure, has reasonable grounds for believing that a crime is being committed in his presence." (Emphasis added).

The purpose of the amendment may be gleaned from the supporting "Memorandum of Legislative Representative of City of New York", Laws of New York 1963, A 243, which stated:

"The object of this bill is to amend Section 177 (1) of the Code of Criminal Procedure to provide that a peace officer may arrest without a warrant where he has reasonable grounds for believing that a crime is being committed in his presence. The present provisions of this Section authorize an arrest only where a crime is actually being committed or attempted in the officer's presence.

"The Appellate Division has recently reiterated that, under Section 177, in order for an officer to arrest in a misdemeanor situation he must be positive that such a misdemeanor has occurred. There is no rule allowing the arrest to be made where reasonable grounds or probable cause can be established. The Appellate Division stated:

"'This may mean, then, that in certain circumstances a police officer may be duty bound to make an arrest on facts known to him, and be subsequently found in the ensuing prosecution (or even in a civil case which might arise from the transaction) to have made an unlawful arrest ascertained and ascertainable only after the arrest.'"

"Continuation of such a state of the law is clearly unsound and detrimental to proper and effective law enforcement.

"Accordingly, it is requested that this bill be favorably reported out of Committee and enacted into law."

Inasmuch as Herman Daughtry was acquitted of both charges against him, (misdemeanors) it matters little which misdemeanor he was charged with first, although in fact the disorderly conduct charge preceded the one for third degree assault.

Clearly, the foregoing citations of judicial opinion, ranging from the Magistrates Court to affirmation by the Court of Appeals stand for the principle propounded here, that an acquittal after an arrest on a charge of a misdemeanor makes that arrest unlawful. Any doubt of this principle should be dismissed in light of the aforementioned amendment

to the Code of Criminal Procedure, Section 177 (1), and the accompanying comment.

Herman Daughtry's acquittal, of course, clearly indicated that his arrest was unlawful and unjustified.

POINT II

IT IS NOT A VIOLATION OF PENAL LAW SECTION 1851 FOR AN INDIVIDUAL TO AID THE VICTIM OF AN UNLAWFUL ARREST

We respectfully state that it is lawful to intervene with a public officer who is unlawfully arresting another and to use reasonable force in that direction.

In People v. Papp, 19 Misc. 2d 331, (Ct. Gen. Sess. N.Y.) (1959)- the defendant Papp, after an officer had placed two individuals under arrest for allegedly committing a misdemeanor, identified himself as a friend of the two persons under arrest, and told them not to go to the police station. Papp was thereupon arrested for violating Section 1851 of the Penal Law. Judge Schweitzer, after finding that the arrest of the two persons was illegal, and in dismissing the charge against Papp, said (p.334):

> "Regarding Papp's motion, inasmuch as the arrest of Florence Pike and Helen Pike was illegal, the charge against Papp must necessarily fall, because of the legal insufficiency of the underlying charge. Section 1851 of the Penal Law makes it a misdemeanor for a person 'to wilfully resist, delay or obstruct a public officer in discharging, or attempting to discharge, a duty of his office.' One of the elements of the

crime is that the police officer be acting in the performance of a duty of his office. In the words of Judge Gaynor in People v. Hochstim, 36 Misc. 562, 567 (granting a certificate of reasonable doubt), conviction revd, 76 App. Div. 25), 'If instead, he was committing a high handed outrage on the rights and liberties of an individual, as was the case with this officer, then he was not in the performance of his duty.' (See also, People v. Richter, 265 App. Div. 767; cf. People v. Daniels, 285 App. Div. 619, 28 Supra.)"

Judge Schweitzer thereafter (p.335) cites People v. Cherry, 307 N.Y. 308 (1954), where the Court of Appeals, per Judge Fuld, said (p. 311):

"The investigation of crime does not require and, certainly, does not justify a disregard of basic rights on the part of law enforcement officials. The legislature has deliberately and carefully enacted legislation authorizing an arrest without a warrant in limited fact situations, and police officers may not ignore the law's demands because they believe that effective policing or the end in view calls for such conduct. It may well have been misguided zeal, not deliberate violation of law, that underlay and accounted for what the officers did here. But, whichever it was, it would be a travesty to adjudge the very victim of the illegal arrest and the unprovoked attack guilty of the crime of assaulting his captors and assailants. The administration of justice would be ill served by such a result." (emphasis added).

See also: People v. O'Connor, 257 N.Y. 473 (1931); People v. Defore, 242 N.Y. 13 (1926); Snead v. Bonnoil; 166 N.Y. 325 (1901).

In People v. Gallo, 206 Misc. 935 (City Mag. Ct. of N.Y.C., Brooklyn, Flatbush Part)(1954), the defendant was

charged with third degree assault for striking a police officer, who, with three other officers, had unlawfully apprehended defendant's brother. Magistrate Solomon dismissed the complaint holding that the defendant had the right to use sufficient force, even against police officers, to prevent the unlawful detention of his brother. See also: People v. Bomboy, 32 Misc. 2d 1002 (1962) (Spec. Sess., Town of Colonie, 1962).

It seems that the same principle applies to a person who interferes with an unlawful arrest of another person as applies to a person resisting his own unlawful arrest. He, in either case, may use as much force as necessary to accomplish his legitimate end. See People v. Massey, 7 App. Div. 2d 850 (2nd-1959); People v. Hamilton, 18 App. Div. 2d 871 (4th-1963); People v. Richter, 265 App. Div. 2d 767 (1st-1943); People v. Daniels, 285 App. Div. 619 (4th-1955); People v. La Sister, 9 Misc. 2d 518 (Spec. Sess. City of New York, App. Part, 1st-1958).

It is submitted that the circumstances here require a reversal of defendant's conviction.

Initially there is the fact that Herman Daughtry was arrested for disorderly conduct and third degree assault. Having been acquitted of both misdemeanor charges, his arrest was unlawful. (Point I, supra)

We believe that even if the defendant and Daughtry were total strangers, she had the right to intervene when he was unlawfully arrested. But in this case, not only were they

not strangers, but there was a close blood relationship between the two, justifying a legitimate interference and concern by defendant when she saw what was happening to her nephew. Nor was it merely a blood relationship, but the families were very close, both living in the same house on McDonough Street. This relationship explains why the defendant was particularly concerned with the incident which occurred on the evening in question.

Assuming, arguendo, that under different circumstances defendant's actions would constitute a violation of Penal Law Section 1851, the fact that here she was allegedly intervening with an unlawful arrest would excuse her of that charge providing she only used as much force as was reasonable or necessary to free Daughtry. If here the defendant did step between Daughtry and Patrolman Matzel, as the latter testified, she had that right. She saw Matzel beat her nephew at least once on the head, hard enough to knock him to the ground. Certainly, stepping between the Patrolman and Daughtry wasn't unreasonable force. Significantly, she wasn't charged with assault, nor was she charged with disorderly conduct. Nowhere does Patrolman Matzel state that the defendant touched anyone but her own nephew (T.p.3).

For the foregoing reasons this Court is asked to affirm the rights of citizens to protect themselves, members of their family and their fellow citizens from overzealous public officials improperly and unlawfully performing their

alleged duty. As a matter of law, the conviction of the defendant should be reversed.

POINT III

THE FACTS SURROUNDING DEFENDANT'S ARREST DO NOT CONSTITUTE A VIOLATION OF PENAL LAW SECTION 1851

The facts presented at defendant's trial on December 19, 1962 did not warrant conviction of the charge; at the very least there is reasonable doubt as to her guilt.

The only witness for the People was the arresting officer, Patrolman Matzel. His testimony reveals that the only alleged overt act of interference by the defendant was her pulling on Daughtry (T.p.4), although this is denied by three other witnesses. Matzel, on recross-examination, admitted striking Daughtry three times, even to the point of knocking him to the ground; substantially the same testimony was given by the other witnesses. While he doesn't state he drew his gun, his own testimony indicates that at some point he did do this (T.p.42).

Matzel denies knowing, even at the time of trial, the relationship of Daughtry to the defendant (T.p.3) The testimony of the defendant and Martin Byer clearly and unequivocally refute this (T.p.9; T.p.37). Moreover, Matzel testified that when the defendant was directed to step aside she refused to do so (T.p.3); this too is refuted by the defendant and Byer. (T.p. 13; T.p.38).

It is interesting to note that other policemen were

present when the event took place; yet the People failed to produce anyone as a witness to corroborate Matzel's testimony. Defendant was not charged with assault, either upon Matzel or Daughtry, nor was she charged with disorderly conduct although her own testimony might indicate that that would have been a more appropriate charge, if there were ground for any charge whatsoever.

Mrs. Toliver, in her own defense, said that when she approached Patrolman Matzel his gun was drawn (T.p.9); this is corroborated by Byer (T.p.30). She admits Matzel asked her to step aside and states she did (T.p.13); this too is corroborated by Byer (T.p.38). Mrs. Toliver testified she saw her nephew struck by Matzel with his night stick, including a blow on the head (T.p.10); this is admitted by Matzel and corroborated by the other witnesses. She testified that with Matzel's gun drawn, she stayed away from him, but screamed when her nephew was beaten; again, this is corroborated by witnesses (T.p.38). Certainly screaming under these circumstances and keeping one's distance from an armed policeman is reasonable and even probable. Also, inquiring about a close relative against whom a gun is drawn is reasonable, too.

Marten Byer, one of the persons arrested during this occurrence, and who was subsequently acquitted (T.p.31) testified he heard the defendant inquire of Matzel as to her nephew (T.p.30); that she identified herself to him but was told it was "none of your business, stay out of this" (T.p.30).

In fact, it was after the defendant was identified that another policeman grabbed the defendant and began beating her (T.p.31). Most important, the witness did not see the defendant interfere with the police officer's arrest of Daughtry (T.p.31).

Herman Daughtry testified that when his aunt approached Matzel and asked what was going on, the officer hit him and said "get back" to Toliver (T.p.36). While the witness doesn't recall too much because of the beating, he does remember Mrs. Toliver screaming (T.p.27).

Although the testimony of the witnesses for the defense vary in some respects, under the circumstances the variance is slight and not unexpected: a gun was drawn; several persons were arrested; one person beaten; a woman was screaming. These acts admittedly took place. Moreover, those arrested with Daughtry were acquitted. Yet the disputed statement of a policeman who made several unlawful arrests on the evening in question is accepted that the defendant pulled on the arm of Daughtry. That, and that alone, is the substance of the charge against her. No one else, not other police officers or bystanders, of which there were several, testified that Mrs. Toliver pulled upon the arm of her nephew. Quite to the contrary, testimony is elicited by another (Byer) that the defendant did not interfere with Daughtry's arrest.

While it is contended that the defendant did not "wilfully" (in the words of the statute) interfere with the

arrest of Daughtry and thereby violate Penal Law Section 1851, certainly the circumstances surrounding the arrest and the subsequent acquittals, in addition to the testimony of all the witnesses, raised a reasonable doubt as to the defendant's guilt.

CONCLUSION

We urge that as a matter of law and fact the conviction of the defendant was improper and should be reversed.

Respectfully submitted,

VLADECK & ELIAS
Attorneys for Defendant-Appellant

SHELDON ENGELHARD,
CARL RACHLIN,
SYLVAN H. ELIAS and
STEPHEN C. VLADECK,
of Counsel

Form 225—25M-709794(62) 447

CRIMINAL COURT OF THE
CITY OF NEW YORK

Part PART 3, County of KINGS

TRANSCRIPT OF RECORD

Docket No. 2433

No. 21362 4/25 1962

People on Complaint of

.....

vs.

HERMAN DAUGHTY

522 McDONOUGH ST.
ADDRESS

18
AGE

DIS. COND.
OFFENSE

ACQUITED
DISPOSITION

ADOL. MAG-CT. 31 SNYDER AVE.
COURT

5/22/62
DATE OF DISPOSITION

M. W. GREY
JUDGE

I hereby certify that this is a true transcript of record on file in the Criminal Court.

Date 8/12, 1963

F. J. Daly
COURT CLERK

Form 225—25M-709794(62) 447

RECEIPT
CRIMINAL COURT OF THE
CITY OF NEW YORK

APPLICATION
FOR TRANSCRIPT OF RECORD

No. 21362 Date 8/12 19 63

Court 4/25/62

Date of Case DIS. COND.

Charge HERMAN DAUGHTY

Defendant 522 McDONOUGH ST

Address 18

Age

Requested by

Name
☐ Defendant, ☐ Attorney, ☐ Governmental Agency

Address

Signature of Applicant

RECEIPT ACKNOWLEDGED

FEE $1.00

Signed
COURT CLERK

EXHIBIT "A"

225—25M-709794(62) 447

CRIMINAL COURT OF THE
CITY OF NEW YORK
PART 3 KINGS
....., County of .....

TRANSCRIPT OF RECORD

Docket No. 1655*
21361 4/28 19 62

* Dock # of 1962 crim ct. Book

People on Complaint of

.....

vs.

Herman Daughty

522 McDonough St.
ESS

18

Ass'lt 3
SE
dged Youthful Off. 6/28/62
& Acquitted subsequently

SITION

Pt. 3 - Kings COURT

10/24/62
OF DISPOSITION

L. Glowa

reby certify that this is a true tran-
of record on file in the Criminal Court.

8/12, 1963

F. J. Daly
COURT CLERK

For.n 225—25M-709794(62) 447

RECEIPT
CRIMINAL COURT OF THE
CITY OF NEW YORK

APPLICATION
FOR TRANSCRIPT OF RECORD

No. 21361 Date ..... 19....

Court .....

Date of Case 4/25/62

Charge .....

Defendant Herman Daughty

Address 522 McDonough St

Age 18

Requested by

Name .....
☐ Defendant, ☐ Attorney, ☐ Governmental Agency

Address .....

Signature of
Applicant .....

RECEIPT ACKNOWLEDGED

FEE $1.00

Signed .....
COURT CLERK

EXHIBIT "B"

Vladeck et al
280 Broadway
NY7

SUPREME COURT : APPELLATE TERM
SECOND JUDICIAL DEPARTMENT

- -X

THE PEOPLE OF THE STATE OF NEW YORK

Plaintiffs-Respondents,

-against-

HENRIETTA TOLIVER,

Defendant-Appellant.

- -X

RESPONDENTS' BRIEF

SUPREME COURT : APPELLATE TERM
SECOND JUDICIAL DEPARTMENT

- -X

THE PEOPLE OF THE STATE OF NEW YORK

Plaintiffs-Respondents,

-against-

HENRIETTA TOLIVER,

Defendant-Appellant.

- -X

RESPONDENTS' BRIEF

STATEMENT

This is an appeal from a judgment of the Criminal Court of the City of New York, Part IB, Borough of Brooklyn, dated January 9, 1963, convicting the appellant of a violation of Section 1851 of the Penal Law and sentencing her to a fine of $100.00 or 30 days imprisonment.

The appellant paid the fine.

THE STATUTE

Section 1851 of the Penal Law provides, in its appropriate parts as follows:

> "A person who, in any case or under any circumstances not otherwise specially provided for, wilfully *** obstructs a public officer in discharging, or attempting to discharge, a duty of his office, is guilty of a misdemeanor."

THE PEOPLE'S CASE

Patrolman Arthur Matzel, a New York City Police Officer, testified as follows: On April 28, 1962, while in uniform, and at about 9:25 P.M., he had occasion to be at Patchen Avenue and McDonough Street, Kings County (2)*. The officer was then placing a prisoner into the sector car at which time the appellant stepped between the prisoner and the officer and started to pull on the prisoner. The appellant continued pulling on the prisoner after the officer had told her to stop. After telling her a second time the officer placed her under arrest (2-3).

On cross-examination the officer testified that at the time of the occurrence he was placing one Herman Daughtry under arrest (4). On further cross-examination, the officer informed the Court that he was present thereafter at the trial of Herman Daughtry and that the case against that person was dismissed because of a reasonable doubt as to his guilt.

THE DEFENSE

The appellant testified in her defense as follows: That she was related to Herman Daughtry, the person who was in the process of being arrested on the night of the occurrence in which she was involved. She testified that at that time "I came out of the laundry and

* Figures in parenthesis refer to pages of the trial minutes

met my nephew and several other boys where Ptl. Matzel had anight stick and gun in his hand." (9) She asked the police officer what was the matter and was told by him to mind her business. She then heard the siren of a police car, at which time the police officer struck her nephew in the head with his night stick whereupon she started to scream (9-10). She testified also that several other police officers then came and held her and forced her into the car. According to her, her skirt fell down and as she bent to pick it up Patrolman Matzel and several other officers beat her (10). She was then taken to the 81st Precinct where she was handcuffed to a pole and beaten to the floor by Patrolman Matzel and another officer while about a dozen policemen beat up her nephew (10). She denied interferring with the arrest of Daughtry and according to her all she asked was, "What's the problem?" (10). She testified that she had never been convicted of a crime (11).

On cross-examination she stated that she did not know when the officer, (Patrolman Matzel), had pulled his gun out because when she first saw him he had his gun in his hand (11). At that time, a quarter to nine in the evening, there were about a dozen people in the street watching (12). According to her, when she was told to step aside, she did so by moving about eight feet (13). She said that she was in the crowd looking at what was

going on (13). When the patrolman struck her nephew on the head with a night stick she started to scream. A police officer came out of the car while she was still screaming and pushed her inside the car. At that time the patrolman had her nephew in another car, and that patrolman came over to her with another officer and began to beat her (14). She denied grabbing the officer or attempting to stop him from striking her nephew (15). The police officer never struck her nephew until "he heard the sirens of police" (16). It was then she started screaming. She denied protesting about her nephew being hit (17). She denied calling the police officer any names (18). A police officer had asked her why she was screaming. According to her the officers did not go over to anybody else because she, was the only one screaming (19).

Herman Daughtry was called as a witness by the defense and testified as follows: That his occupation was that of shipping clerk and that he had never been convicted of any crime. He described the appellant as his aunt (20). The night he was arrested he saw his aunt before the officer hit him, and as he fell down he heard his aunt say, "What's going on?" and then somebody hit me in the chest (21). He heard his aunt "hollering" and at no time did he see her place her hands on the officer that had arrested him (21). He admitted to having then been arrested for disorderly conduct and assault (21).

On cross-examination he testified, when he first saw his aunt that evening she was coming across the street and when he got to where she was, the officer had already struck him (24). He had heard her ask "What's going on". When asked on cross-examination what happened then, his response was, "I don't know exactly what happened" (25). He heard the siren at the time he was first hit and when his aunt was crossing the street (25). He thought he heard the officer tell his aunt "Get back". He did not know whether his aunt did get back, because he was hit again and spun around (26). As he was on the ground getting up he saw one of the officers grab his aunt. He did not then know what was happening between his aunt and the police officer at the time that he was down and being kicked by somebody (27). Although he heard his aunt screaming, he did not know what she was screaming (28). He also testified that he did not see his aunt coming towards him because "he was in a blur" (28). He did not know how many officers went over to his aunt (29).

Morton Byer was called to testify by the defendant. In substance he stated that he had seen officer Matzel before the appellant was placed under arrest (29). At that time the witness was against the wall and the officer had Daughtry against the wall with a gun and struck the latter (30). He heard the appellant state "What happened? What are you striking him for?"

to which the officer answered, "You stay out of this", "None of your business, stay out of this." (30) He at no time saw the appellant place her hands on the officer (31). The witness admitted to being one of those arrested that evening and charged with disorderly conduct which was subsequently dismissed (31). He denied ever having been convicted of a crime (32).

On cross-examination he stated that there were about 12,13,14 people that collected at the scene (33). He had seen the appellant crossing the street. As the appellant approached the police officer, the officer struck Daughtry (35). He did not know whether the appellant had approached the police officer from the front or back. All he heard was the question she had asked of the officer (36). When asked whether the appellant was between the police officer and her nephew his answer was, "I don't know, I can't remember." (36-37) The witness testified also that the officer was not fresh and that he told the appellant to "Stay out of it" (37). When asked whether the officer was nice about it, his answer was "Yes, he was nice about it at the beginning, yes." (37). After theofficer had told the appellant to step aside she went near a car and started screaming after Daughtry was hit (38).

Patrolman Arthur Matzel, the complainant, was recalled to the stand and the following testimony was elicited: At the time that the appellant came over to him

from across the street, he did not have a gun in his hand but, rather, a night stick (42). He admitted to striking Daughtry with the night stick about three times in the presence of the appellant (42). Daughtry was knocked down as a result (43).

Attached to the Appellant's Brief is a Certificate of Disposition covering the trial of the action against Herman Daughtry on the chargesof Assault in the Third Degree and Disorderly Conduct. With reference to the charge of Assault in the Third Degree the disposition indicated, reads as follows: Adjudged youthful offender 6/28/62 and acquitted subsequently. As for the charge of Disorderly Conduct the disposition made was "acquitted."

POINT I

APPELLANT'S GUILT WAS ESTABLISHED BEYOND A REASONABLE DOUBT

It is respectfully submitted that the two issues upon this appeal are (1) whether the ultimate acquittal of Herman Daughtry upon the charge of being a Youthful Offender, Assault in the Third Degree and Disorderly Conduct, has the effect of exculpating the appellant with respect to her interference with the police officer in taking her nephew into custody and (2) whether the evidence establishes beyond a reasonable doubt that she violated provisions of Section 1851 of the Penal Law.

I

Section 1851 of the Penal Law, supra, provides that "a person who, wilfully obstructs a public officer in discharging, or attempting to discharge, a duty of his office, is guilty of a misdemeanor." Appellant lays great stress on the recent decision of the Appellate Division, First Department in People v. Dreares (15 App. Div. 2d 204, aff'd 11 N.Y. 2d 906). It was therein held that where an arrest is illegal (in that the officer has no warrant and the subsequent acquittal of the defendant on the charge for which he was arrested establishes conclusively that the crime was not committed) the use of reasonable force in resisting the arrest does not constitute an assault. That, however, is not this case. (People v. Zapata, 17 App. Div. 2d 617). In the instant case the trial Court (which saw and heard the witnesses) found as a fact that the appellant who did not know what had taken place previously, saw a police officer /in uniform in the act of taking a prisoner (appellant's nephew) into custody. The Court, however, found as a fact that the appellant attempted to pull her nephew away from the policeman's grasp, despite the fact that the officer had asked her not to interfere. Indeed appellant's own witness testified that at first the officer was "very nice about it" and had simply asked her to mind her own business (30,37).

It is submitted that it was the intent of the Legislature in enacting Section 1851 of the Penal Law, supra, to prohibit wilful interference with a police officer in the discharge of his duty. It is to be noted, in reaching a proper construction of Section 1851 supra, that Section 21 of the Penal Law provides:

> "The rule that a penal statute is to be strictly construed does not apply to this chapter, or to any of the provisions thereof, but all such provisions must be construed according to the fair import of their terms, to promote justice and effect the objects of the law."

If appellant's argument were to be adopted, then any by-stander who happens to appear on the scene at the time a defendant is being taken into custody, could attempt to dissuade the police officer and escape the consequences thereof, should the person being arrested be thereafter acquitted after a trial. This we submit is clearly contrary to the intent of Section 1851 of the Penal Law, supra. The case of People v. Papp (19 Misc. 2d 331), upon which the appellant relies, is not to the contrary. In Papp, supra, a police officer, who was not present when a misdemeanor was committed, made such arrest upon his arrival at the scene after having been summoned by one of the complaining parties. This is a far cry from the situation at bar where the arrest was unlawful only because the defendant was thereafter found /not guilty after a trial. The distinction between the instant case and that of People v.

Gallo (206 Misc. 935), cited by the appellant at pages 10 and 11 of his brief, is that in Gallo, supra, the police officer was not in uniform when the brother of the person arrested intervened. In the instant case, however, the police officer was in uniform at the time the appellant attempted to interfere with the arrest of her nephew.

II

With respect to the factual issue presented upon this appeal the Court, below, which had the opportunity of seeing and hearing the witnesses, saw fit to believe the police officer rather than the testimony of the appellant and her witnesses. Counsel concedes that "the testimony of the witnesses for the defense vary in some respects." (Appellant's Brief, p.15) The Court undoubtedly considered such variance together with the improbable tenor of the testimony offered on appellant's behalf, in determining the issue of credibility. In People v. Tepperman (151 Misc. 810) the Appellate Part of the former Court of Special Sessions of the City of New York significantly wrote:

> "The testimony of the officer and of the appellant and her witnesses was conflicting. This conflict the magistrate decided in favor of the officer and against the appellant. It was the duty of the magistrate to decide this question of fact and finding will not be disturbed by the appellate court."

(See also Lee v. City Brewing Corp. 279 N.Y. 380, 384; 63 Building Corp. v. Schlaeter, 11 App. Div. 2d 743; People v. Katz, 154 App. Div. 44, aff'd. 209 N.Y. 311; People v. Atlas, 183 App. Div. 595, aff'd. 230 N.Y. 629).

It is to be noted the statute requires that in interfering with a public officer in the performance of his duty, such interference must be wilful. It is submitted that the appellant in the instant case "wilfully" interfered with the police officer when, after having been requested to step aside, persisted in her efforts to extricate her nephew from the hands of the police. It has been said that the word "wilful" includes "the idea of an act intentionally done with a wrongful purpose, or with a design to injure another, or one committed out of mere wantonness or lawlessness" (Wass v. Stephens, 128 N.Y. 123, 128; People v. Marrin, 205 N.Y. 275; People ex rel. Campbell v. Police Comrs., 13 App. Div. 69; Pyramid Musical Corporation v. Floral Park Bank, 268 App. Div. 783).

The other cases upon which the appellant relies are inapposite to the facts of the instant case for in each instance they involve the victim either of an unlawful arrest or an unlawful search. They have no application to the case at bar where a third person attempts to interfere with a uniformed police officer in the act of taking an individual into custody. The issue succinctly stated is whether acquittal of such individual has

the effect of vitiating appellant's conduct which would otherwise have fallen within the purview of Section 1851 of the Penal Law, supra. The fact that the police officer admitted having struck Herman Daughtry, does not we submit play any part in the issue whether the appellant had wilfully interfered with the police officer in the performance of his duty. It is to be noted that the appellant's own testimony was that the officer did not strike the appellant until <u>after</u> she had attempted to pull him away from the policeman's grasp (10).

Without conceding that the appellant had any right at all to interfere with the arrest of her nephew it is to be pointed out that, by her own testimony, she was not aware of any of the circumstances which had led up to her nephew's arrest. It is respectfully submitted that the appellant's only reason for interfering was based on the familial relationship with the said Herman Daughtry,

CONCLUSION

The judgment of conviction should be affirmed.

Dated: Brooklyn, New York
October, 1963

Respectfully submitted,

EDWARD S. SILVER
District Attorney
Kings County

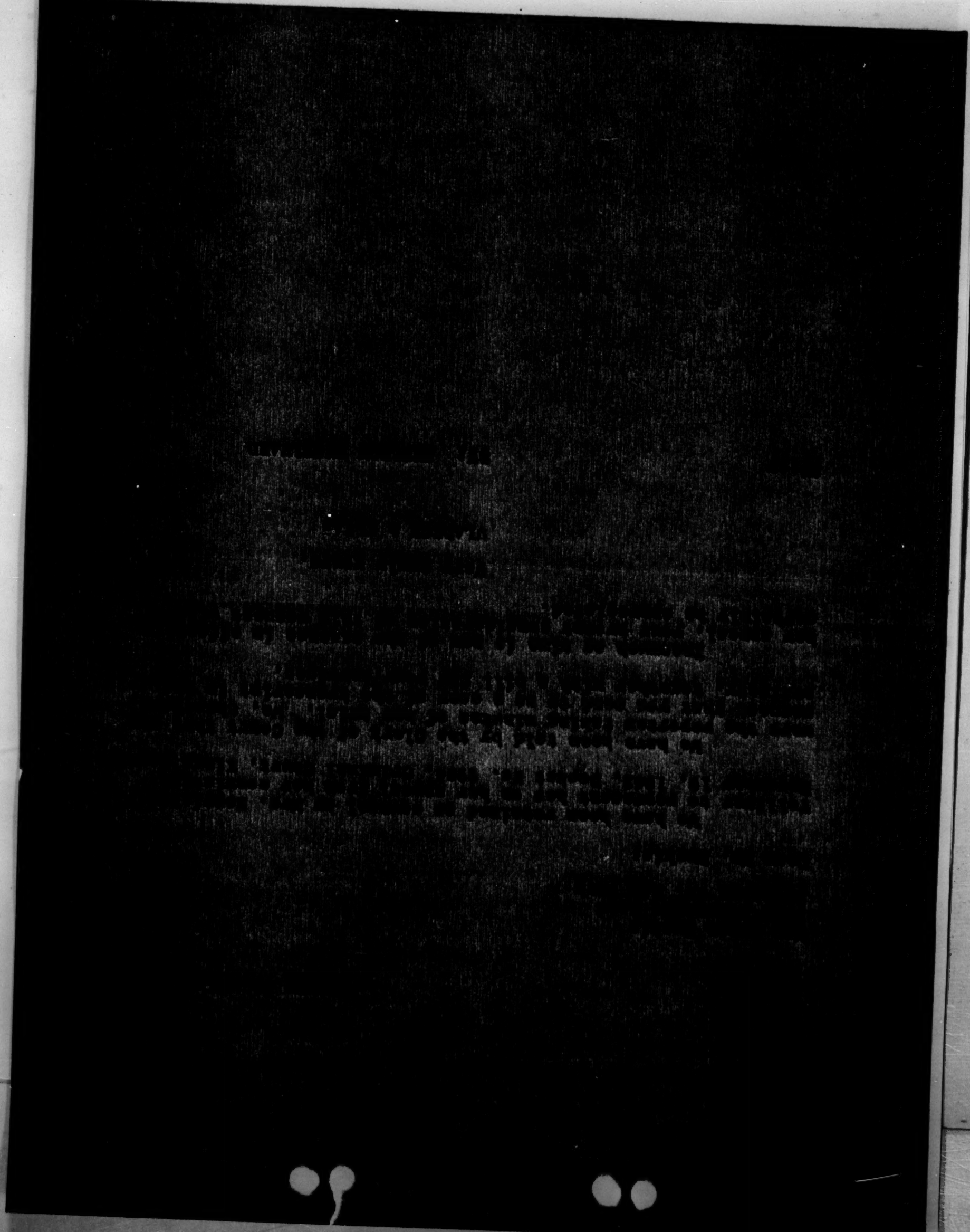
RAYMOND J. SCANLAN,
HARRY BRODBAR,
Assistant District Attorneys,

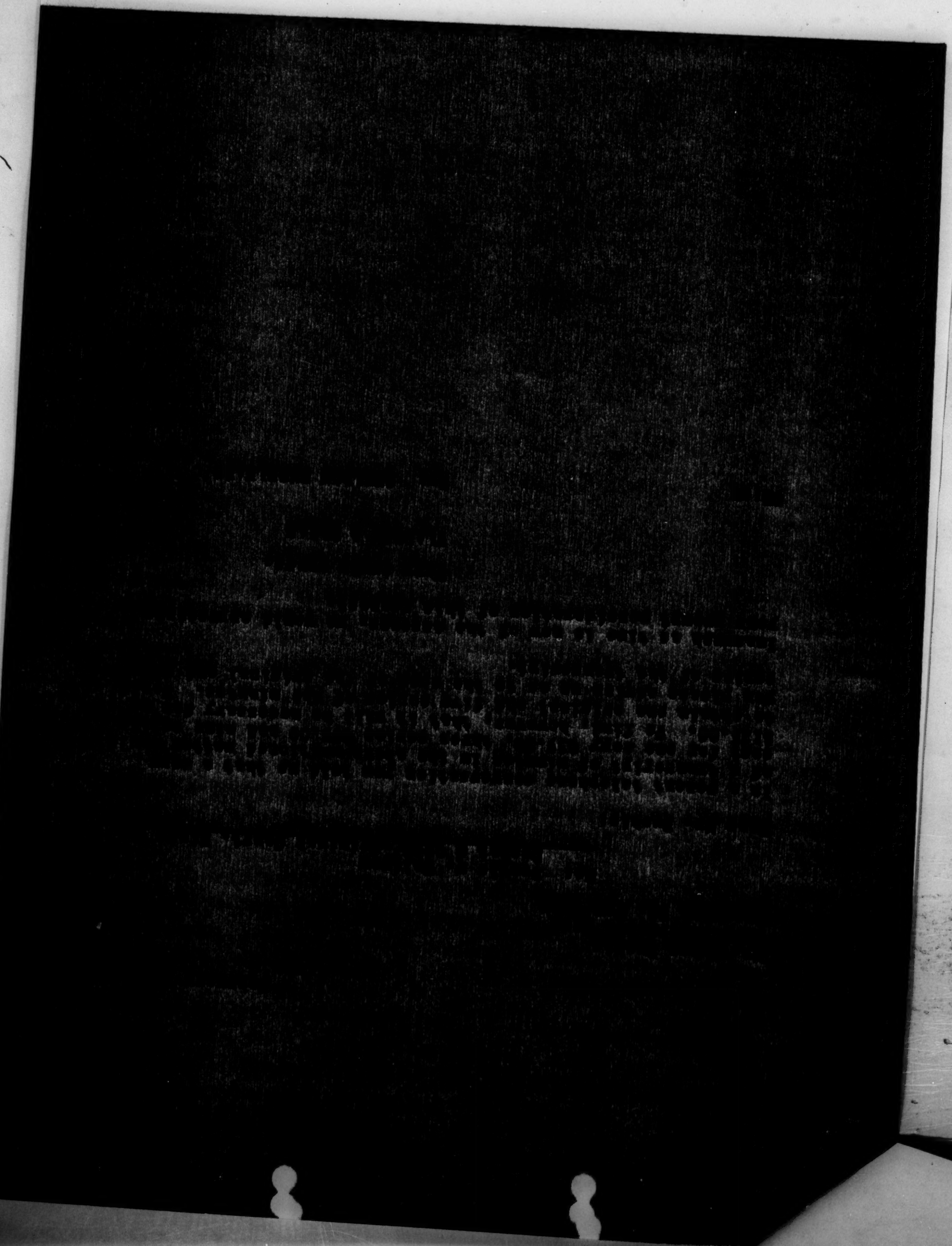
Of Counsel.

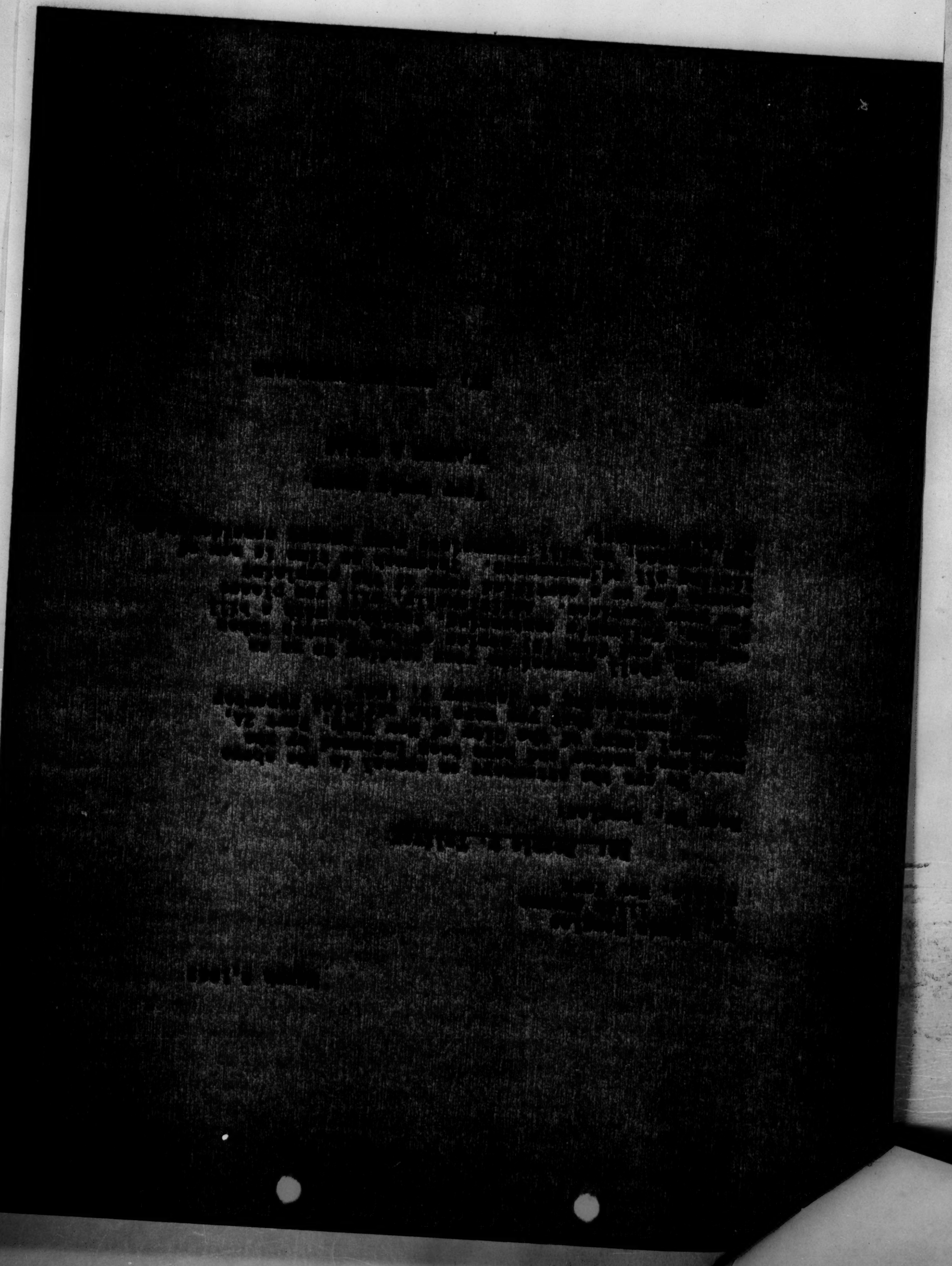
People v Tolmie ?

N.Y. Law Journal
Jan. 13, 1964

People, &c., res, v. Henrietta Tolliver, an (K)—Judgment of conviction unanimously reversed on the facts, fine remitted and new trial ordered. There should be a fuller development of the facts and circumstances relative to the incident which







RECEIVED
MAR 13 19 3
VLADECK & ELIAS

Edwin S. Douglas, Jr.,
Official Court Reporter
Criminal Court of N.Y.C.

March 12, 1963

Vladeck and Elias
280 Broadway
New York 7, N.Y.

Attn: Sheldon Engelhard, Esq.

Re: People vs. Toliver

Dear Sir:

In reply to your letter of March 8, 1963, requesting the minutes in the above named case, please be advised that I did not work in Part 2A, Kings County, on January 9, 1963. You requested the minutes of the sentence, together with a certified copy of the complaint in said case.

I have checked my diary and the actual Court minutes of January 9, 1963, and on that day I was assigned and did work in Part 2B. (Three-Judge Trial Part)

May I suggest that you call Rector 2-6200, and ask for Miss Rossella's Office. Ask that office to check and give you the name and address of the Court Reporter that worked in Part 2A on January 9th, as you have contacted me and I was not there, but in Part 2B.

If I can be of any further assistance call my home at HO 8-5288, any evening after 6:00 p.m.

Very truly yours,

Edwin S Douglas Jr

P.S. Inform Miss Rosella's Office that the Court Reporter's schedule indicates Carol Craig was assigned to Part 2A the week of Jan. 7th.

April 21,

Mr. Harry Bloom
[illegible]
Brooklyn, New York

Re: People v. Hilliard
[illegible]

Dear Mr. Bloom:

We are in receipt of an original and four copies of the minutes taken by you at the conference of Mrs. Hamilton's [illegible]. Our letter of March 13th asked for an original and three copies. Kindly [illegible] make up the [illegible] and forward [illegible] all [illegible].

Because of the material [illegible] contained [illegible] on original and four [illegible] copies of the minutes and sample [illegible] of [illegible]. Because [illegible] are [illegible] [illegible] [illegible]

LOUIS F. LANUTO
1160 Rhinelander Avenue
Bronx 61, N.Y.
April 30, 1963

RECEIVED
MAY - 2 1963

Vladdek and Elias
280 Broadway
New York 7, N.Y.

VLADECK & ELIAS

Re: People vs. H. Toliver
Night Court - 4/28/62

Att: Sheldon Engelhard, Esq.

Gentlemen:

As per your letter of April 25, 1963, enclosed you will find an original and five additional copies of above arraignment in Night Court before the Honorable Walter Bayer.

Cost for said minutes is $12.50.

Thank you for your check by return mail.

Very truly yours,

Louis F. Lanuto

Official Court Reporter

Form 63 185

Supreme Court

KINGS COUNTY

Brooklyn 1, N. Y., MAY 17 1963

N329 The People, etc.,
Respondent,
vs.
Henrietta Toliver,
Appellant.

In the above matter,

Unless this case is noticed for argument and disposed of at the coming term of this Court, it will be placed on the calendar for dismissal for lack of prosecution.

FRANK T. CUNNINGHAM

Clerk

PLEASE BRING THIS CARD WITH YOU

RECEIVED
JUN- 5 1963
VLADECK & ELIAS

June 4, 1963

Messrs. Vladeck & Elias,
280 Broadway,
New York 7, New York

Att: S. Engelhard

Dear Sir:

Please forward check in the sum of $19.94 for transcript of sentence minutes in the case of People vs. Henrietta Toliver, heard on January 9, 1963, before Hon. Ludwig Glowa, Part 1B, Criminal Court, Brooklyn, NY, and for six copies of of photostats of complaint, for which I had to pay the printer.

This bill has been due since March 13, 1963.

Yours truly,

Harry Bloom

Harry Bloom

6/14/63 - Paid $12.50 by check # 401 - UTC. Spec & Bloom personally - 7.44 still due.

I A. Introduction - Appl't
- Resp/t

B. Reserve 3 minutes for rebuttal.

II. Appeal from Conviction of viol 1851
~~△ charged + found guilty of~~
P.L. § 1851 {read}

△ sentenced to $100 or 30 days
- paid $100.

III. FACTS:

A. April 28 '62 arrested for D/C + Assault 3rd
- 2150 Morton Byers

B. △ saw the event -
asked officer about it
- saw officer hit nephew {p. 42,3}
- △ did not touch officer only nephew

(7.

Sequitur

* C. Daughtry acquitted of both charges - Byers acquitted.

IV. A/t contends

A. Arrest of person by an officer, w/o warrant, ~~when~~ for a misdemeanor is unlawful per se when that person is acquitted of the charge against him.

B. It is not a violation of penal law section 1851 for an individual to aid the victim of an unlawful arrest

V Read CCP - § 177.

~~IV~~ People v. Dreares (p. 5)

1. Δ acquitted of loitering.
2. AD (1st) reversed charge of 3rd degree assault
3. "Δ's prior acquittal of the crime [read p. 5]." held.

just refer. 4. People v. Isaac [p6]

~~5. Hypothetical - case cited People v. Cherry.~~

5. People v. Zapata - charge really for assault

(3).

VI. A. CCP - 177 amended.
[read]
effective July 1, '63

B. memo in support of amendment (p. 8).

~~C~~.

VII. Second contention.

A. People v. Popp. (p 9)

- Δ not guilty of viol. §1851 where underlying charge against persons in whose behalf he intervened were dismissed.

Qualification B. People v. Cherry (p 10) cited in Popp case - dealt essentially with reasonable and necessary force by a person being unlawfully arrested.
*. - makes no difference about uniform
- P.L. § 240 (3)

(4).

C. Preglov. Gallo - (p10)

△ had right to use sufficient force, even against police officers to prevent an unlawful detention of his brother.

VIII. PL ¶ 21 - City by Resp.

answer with
quote of Frossel.

dangerous

P.L. § 246 (3) Use of force not unlawful in certain cases.

"When

- To use or attempt, or offer to use, force or violence upon or towards the person of another is not unlawful in the following cases:

(3) When committed either by the party about to be injured or by another person in his aid or defense, in preventing or attempting to prevent an offense against his person, or a trespass or other unlawful interference with real or personal property in his lawful possession, if the force or violence used is not more than sufficient to prevent such offense.

Form 63-A

Supreme Court

Appellate Term—2nd Department
Civic Center, Brooklyn 1, N. Y.

Brooklyn 1, N. Y. 7/15/1963.

People, etc.,

vs.

Henrietta Toliver

Cal. #170

Unless this case is noticed for argument and disposed of at the coming term of this Court, it will be placed on the calendar for dismissal for lack of prosecution.

The coming term of this Court is:

September 3, 1963

FRANK A. CUNNINGHAM
Room 766 Chief Clerk

246 F3d

And whether or not Δ believed that they were police officers, he had a right to resist.

"Whether or not the police officers exhibited their badges to Δ is completly beside the point. A badge may not substitute for a warrant of arrest, nor excuse its absence, when one is required. The legal maxim that one is presumed to know the law extends to the police."

Section 177. In what cases allowed

A peace officer may, without a warrant, arrest a person,

1. For a crime, committed or attempted in his presence;

2. When the person arrested has committed a felony, although not in his presence;

3. When a felony has in fact been committed, and he has reasonable cause for believing the person to be arrested to have committed it;

Section 1851. Resisting public officer in the discharge of his duty

A person who, in any case or under any circumstances not otherwise specially provided for, wilfully resists, delays, or obstructs a public officer in discharging, or attempting to discharge, a duty of his office, is guilty of a misdemeanor.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision one of section one hundred seventy-seven of the code of criminal procedure, as amended by chapter nine hundred forty-two of the laws of nineteen hundred sixty, is hereby amended to read as follows:

1. For a crime, committed or attempted in his presence, or where a police officer as enumerated <u>in section one hundred fifty-four-a of the code of criminal procedure, has reasonable grounds for believing that a crime is being committed</u> in his presence.

§2. This act shall take effect July first, nineteen hundred sixty-three.

People v. Zapata, 17 AD2d 617, 230 NYS2d 36 (1st - July 1963)

Facts: Δ convicted of assaulting a police officer. Δ did not know that Cl. was a police officer or that he was seeking to arrest her. ∴ when Δ attacked Cl, Δ did not attack Cl in an effort to resist an illegal arrest. [that is different from People v. Doores" when an arrest is illegal (in that the officer has no warrant and the subsequent acquittal of the defendant on the charge for which he was arrested establishes conclusively that the crime was not committed) the use of reasonable force in resisting the arrest does not constitute an assault."

- in fact that charges against Δ for assault committed while resisting arrest were dismissed.

Point II(?) + Point II

(19 Misc. 2d 331)

People v. Papp, 185 NYS 2d 907 (1959) {Gen Sess. N.Y.}.
Schweitzer

Action - To set aside 2 orders & file 2 informations.

- Do Pike asked officer to arrest 2 other women who in turn ask that both Pike be arrested. A friend of the Pike (Papp) told them that they shouldn't go into the police wagon.

- The alleged assault by the various women was not witnessed by the police.

- Papp was charged with restraining an officer in the performance of his duty.

1. "in cases of misdemeanors, a police officer w/o a warrant may arrest only where the offence was committed or attempted in his presence (People v. Defore, 242 N.Y. 13)."

2. {Apparently the other women did not make an arrest ∴ the arrest of Pikes was illegal since crime was not committed in presence of the officer.?

3 "Regarding Papp's motion, inasmuch as the arrest of Florence Pike & Helen Pike was illegal, the charge against Papp must necessarily fall, because of the legal insufficiency of the underlying charge.

4 citing People v. Hochstim ~~320~~ 73 NYS 626, 630 (78 NYS 638)," If misled, he (officer) was committing a high-handed outrage on the rights and liberties of an individual, as was the case with this officer, then he was not in the performance of his duty."

People v. Papp, 185 N.Y.S. 2d 907 (1959)
Schweitzer, J.

△2 asked police officer to arrest 2 women for fighting with △1. A detective appeared and was asked by the 2 women to arrest △1 & △2. △3 refused to go into wagon & one △ kicked an officer. △ Papp, a friend advised △ not to go to police station; he is charged with viol. Penal Law § 1851.

The grand jury minutes fails to show any fight by the 2 women & the △. The Ct cited the prov. of C. Crim Procedure concerning arrest.

"But when the arrest is illegal," △ had the privilege ... of resisting and using force and violence against his assailants even though they were police officers, "to prevent an offense against his person ... if the force or violence ... (was) not more than sufficient to prevent such offense."

Ct. cited: People v. Cherry 307 N.Y. 308, 121 NE 2d 238; People v. O'Connor, 257 NY 475, 178 NE 762; People v. Massey 7 AD 2d 850, 181 NYS 2d 473. People v. Daniels, 285 AD 619, 139 NYS.

People v. Richter, 265 AD 767 40 NYS 2d 951.

Point I

People v. Brown, 225 NYS 2d 157 (1962) Qu. Cty Ct.
SHAPIRO

Arrest was illegal, where police did not know at time that burglary had been committed by anyone dealing with articles contained in valise possessed by Δ, who was not committing any crime when he was placed under arrest, and it was only after questioning that police learned that valise contained proceeds of burglary, and facts revealed by search could not be utilized against Δ.

Cited by People

Wass v. Stephens, 128 NY 123 (1891)

Andrews

- Malicious prosecution.
- Δ sought out warrant for arrest of Π on grounds that Π cut certain pipelines of Δ. (a misdemeanor) Π was acting under orders of his superiors. Δ's remedy properly was for breach of K.

"The Π intentionally disconnected the pipes, and it may be conceded in so doing violated a right of the Δ. But the word 'wilfully' in the statute means something more than a voluntary act, and more also than an intentional act which in fact is wrongful. It includes the idea of an act intentionally done with a wrongful purpose, a bad design to injure another, or one committed out of mere wantonness or lawlessness.

People v. Merrin, 205 NY 275 (1912)

Vann, J.

Held, no error; that in order to show knowledge, intention and the absence of mistake, the DA had the right to prove similar acts, (forged notes) done under similar circumstances at about the same time, with intent to defraud the same person by the same means. The common method, purpose and victim formed the connecting links which bind strung together the nine successive and successful efforts to defraud pursuant to a common scheme.

Point I & Point II

People v. Cherry, 307 N.Y. 308 (1954)
Fried -

When police officers were guilty of an illegal arrest of citizen and an unlawful assault on him, he had the privilege of resisting and using force or violence against the police officers, to prevent an offense against his person, if force or violence used by him was not more than sufficient to prevent illegal arrest and unlawful assault.
Code Crim. Pro. §177
PL §246(3)

RII

People v. Gallo, 206 Misc. 935 (1954)
Solomon, Mag

Facts: 4 police officers, in civilian attire unlawfully apprehended Δ's brother on the sidewalk in the early hours of the morning and brought him into a meeting hall where they had no right to be.

Held: Δ had right to use force against the officers sufficient to prevent unlawful detention of his brother and was not guilty of "assault" in the third degree for force striking with his fist the officer who was restraining his brother, regardless of whether identity of police officers as such was known to Δ.

CCP §§ 167, 177, 180, 183; PC § 246(3)

RII

People v. La Lister, 9 Misc. 2d 518 (1958) - App. Part 1st Dept., Per Curiam

Facts: △ was charged with D/C - PL 722(2)(f). The App. Part in reversing the Ct. of Special Sessions ~~held~~ held the evidence ~~showing that~~ showed that vulgar and offensive language was directed solely to the officer and failed to show that it was used in the hearing or presence of any other persons or that it annoyed, disturbed interfered with, obstructed or became offensive to others did not constitute a breach of the peace.

Held: Where arrest of △ was not lawful and △ believed that the arrest was unlawful, he was justified in resisting same. citing People v. Cherry.

Pt II

People v. Hamilton, 18 AD 2d 871 (4th - 1963)

Δ was convicted of unlawful entry, a misdemeanor and 3rd degree assault (originally it was for burglary, 2nd degree) the Court held that both convictions should be reversed.

because

there was no proof from which an inference might be drawn that Δ's entry into the apt. was with intent to commit a crime and that absent proof that excessive force was used by Δ in resisting unlawful arrest, his resistance could not constitute 3rd degree assault.

Pt. II

People v. Daniels, 285 A.D. 619 (1955) - 4th
Vaughn, J.

Facts: - Δ charged with assaulting an officer in resisting a lawful arrest (§ 242 (5) Penal Code).

- At no time did the officer tell Δ why he was under arrest. On trial the officer said Δ was arrested for drunkenness and D/C.

Held: Resistance to attempted unlawful arrest does not constitute assault in any degree, absent showing that more force was used than necessary to resist arrest.

point II

People v. Bomboy, 32 Misc. 2d 1002 (1962)

Facts: Two (2) △s were charged with Breach of the Peace, and one (1) △ also charged with 3rd Degree Assault.

Held Not guilty

Reasoning △s were not guilty of D/C when they refused to identify themselves to the Troopers when requested to do so, and that the arrest of the △s for D/C was illegal; that the allegedly loud and obscene language used by the △s when they were advised of their illegal arrest was not a breach of the peace, and that one of the △s who struck a Trooper on the nose did not use unreasonable force in resisting the illegal arrest and was ∴ not guilty of 3rd Degree Assault.

1

~~Point I~~ & Point II

People v. Hochstein, 36 Misc. 562, 73 NYS 626 (1901)
(Kings Cty, Spec Term)
Gaynor, J.
- & jd cert. of reasonable doubt
- Δ convicted of felony for interfering with a deputy superintendent of elections in the performance of his duties.

- The deputy was attempting to prevent another party from voting when Δ interfered. The voter was never prosecuted for allegedly illegally voting.

- "To make out the criminal offense of hindering or delaying an officer "in the performance of his duty" ... the first thing that has to be proved is that the officer was "in the performance of his duty". If, instead, he was committing a high-handed outrage on the rights and liberties of an individual, as was the case with this officer, then he was not in the performance of his duty. It seems to be no longer known to many if not most of the citizens of the County of New York, though it is well understood all over the rest of the state, and to

(2)

the whole country, that an officer who, instead of being in the performance of his duty, is in fact committing a wrongful trespass upon an individual, need not be submitted to, but may on the contrary be lawfully ~~resisted~~ resisted the same as though he were a private person. His official position does not license him to interfere with and arrest people & ~~his~~ pleasure w/o a warrant obtained from some lawful court or magistrate."

People v. Hochstim, 78 NYS 638 (1902) AD-1st

Held- "It was error to refuse to direct an acquittal for failure to prove false registration, as, w/o such evidence, it did not appear that the officer was acting in the line of his duty.

- Reversed

MK

People v. Fogan, 241 NYS 2d 344.
D. refused to right of arrest in a case of a misdemeanor. H. note refers to change in law as of July 1 '63 (Chap. 580 L 1963 [§ 1th.]

Point II

People v. Richter, 265 AD 767, 40 NYS2d 751
(AD-1st - 1943)

Callahan, J. -

Where inspectors of weights and measures seized diamond ring and descriptive sign displayed in jewelry shop window w/o intending to make the arrest and w/o knowing whether offense of false advertising had been committed until they later had ring examined by city expert, probable acts of president of corporate owner of jewelry shop in attempting to reclaim ring and sign did not constitute offense of "resisting an officer," since seizure by inspectors was unlawful.

Point II

People v. Massey, 7 AD2d 850, 181 NYS2d 473 (AD - 2d, 1959) (ACLU - Redfield amicus curiae)

Memo by Ct.

Where Δ's alleged assault upon police officer occurred during course of Δ's resistance to attempt of such officer and fellow police officer, both w/o warrant, to force Δ against his will to accompany them to station house for questioning as a suspect in commission of a reported crime of stone throwing, a misdemeanor, under circumstances the conduct of police officers constituted an unlawful arrest of Δ which justified his resistance and his counterassault upon the police officer.

Ct. cited: People v. Glennon, 37 Misc. 1, 74 NYS 794; People v. Field, 15 NYS2d 561; People v. Singleton, 117 NYS2d 114.

Point I and Point II

People v. Tinston, 163 NYS 2d 554 (1957)
Chas. Solomon, J

Where police officers exceed their authority in making arrest, victim may display legally limited force to prevent abuse against his person. Code Crim. Proc. §§177, 183; P.L. §246 (3)

Suspicion, no matter how strong does not confer upon police officer power which would otherwise be lacking; and commendability of police objective is no substitute for legal authority.

Point I

People v. Carbone, 230 NYS 2d 822 (62)

Dickens, J.

A search is good or bad when it starts and does not change character from its success.

Point I

Gill v. Montgomery Ward & Co., 129 NYS 2d 288, 284 AD 36 (3rd - 1954), Halpern, J

- An action for false imprisonment.

"... The arrest was for a misdemeanor at most and an arrest for a misdemeanor either by a private person or a peace officer w/o a warrant is made at the peril of the person making the arrest. Good faith is no excuse in an action for false imprisonment, if an innocent person is mistakenly arrested w/o a warrant on a charge of a misdemeanor. Code of Criminal Procedure §§ 177 and 183; McLaughlin v. New York Edison Co., 252 N.Y. 202, 169 N.E. 277."

Point I

PEOPLE v. DREARES, 221 N.Y.S.2d 819, 15 A.D.2d 204, (1st - 1961) aff'd 11 NY2d 906, 228 NYS2d 467 (62)
BREITEL, J.

- △ was convicted of 3rd degree assault after being acquitted of a loitering charge.

- " Such an acquittal, then raises the issue as to the lawfulness of the arrest in which △ forcibly resisted the transit officers. The rule in this State is that an arrest w/o a warrant for an offense less than a felony must be posted upon the actual commission of the crime or offense in the presence of the arresting person (Code Cr. Proc. §177; Stearns v. Tibbits, 153 N.Y. 272, 275, 85 NE 1077, 1078). Defendant's prior acquittal of the crime for which he was arrested consequently established the arrest to have been unlawful, and he was therefore entitled to resist such an arrest with reasonable force (People v. Cherry, 307 N.Y. 308, 121 N.E. 2d 238)."

Point II

People v. La Sister, 170 NYS2d 702 (1958)

Where arrest of Δ was not lawful and Δ believed that the arrest was unlawful, he was justified in resisting same.

citing - People v. Cherry

Point II

People v. Gallo, 135 NYS2d 845, (1954),
Chas. Solomon, Mag

Where 4 police officers in civilian attire unlawfully apprehended Δ's brother on the sidewalk in the early hours of the morning and brought him into a meeting hall, where they had no right to be, Δ had the right to use force against officers sufficient to prevent unlawful detention of his brother and was not guilty of "assault" in the third degree for twice striking with his fist the officer who was restraining brother, regardless of whether identity of police officers as such was known to Δ. (CCP §§167, 177, 180, 183; PL §246(3)

Point II

People v. Daniels, 139 NYS 2d 597 (AD, 4th - 1955)
Vaughan, J

- △ charged with assaulting an officer in resisting lawful arrest. (§ 242 (5) Penal Law)
- At no time did the officer tell △ that he was under arrest. On trial the officer said △ was arrested for disturbance and disorderly conduct.

- Resistance to attempted unlawful arrest does not constitute assault in any degree, absent showing that force was used than necessary to resist arrest.

Point II

People v. Bombry, 229 NYS2d 323 (1962)

2 Δ were charged with Breach of the Peace, and one also with 3rd degree assault. The Ct held Δ were not guilty of D/C when they refused to identify themselves to Troopers when requested to do so, and that the arrest of the Δs for D/C was illegal, and that allegedly loud & obscene language used by the Δs when they were advised of their illegal arrest was not a breach of the peace, and that one of the Δs, who struck a Trooper on nose did not use unreasonable force in resisting the illegal arrest and was therefore not guilty of 3rd degree assault.

Point I

People v. Isaac, 239 NYS 2d 624 (1963) 627
Scarpito, J.

- Ct distinguishes this case from Downes case.

..."In the Downes case, it was held that an acquittal on a charge of loitering established that the crime had not been committed, and that the arrest for that crime, a misdemeanor, was thus illegal under Code of Criminal Procedure Section 177, thereby giving the person arrested the right to resist the arrest."

- the fact that the charges for which Δ had been arrested were dismissed when Δ later produced the required documents in court did not establish the illegality of the arrest or the search of the driver's person conducted pursuant thereto in view of fact that failure to exhibit the requested documents to the officer would also have justified an arrest.

Point II

People v. Hamilton, 237 NYS 2d 97, 18 AD 2d 871 (4th-'63)

Convicted of unlawful entry, a misdemeanor + 3rd degree assault (Originally it was for burglary 2nd degree) the court held that both convictions reversed since there was no proof from which inference might be drawn that Δ's entry & exit was with intent to commit a crime and that absent proof that excessive force was used by Δ in resisting unlawful arrest, his resistance could not constitute 3rd degree assault. ∴ arrest was illegal and Δ had "right to resist the unlawful arrest by necessary force.

[Citing People v. Perry & People v. Deanes] "there was no proof that excessive force was used by appellant."

People v. Dreares, 15 AD 204 (1st)
People v. Isaac, 239 NYS 2d 624
Gil v. Montgomery Ward + Co., 284 AD 36 (3rd)
People v. Tinston, 6 Misc 2d 485
People v. Pappa, 19 Misc. 2d 331
People v. Cherry, 307 N.Y. 308
People v. O'Connor, 257 NY 473
People v. Defore, 242 NY 13
Snead v. Bonnoil, 166 NY 325
People v. Dallo, 206 Misc 935
People v. Bombry, 32 Misc. 2d 1002
People v. Massey, 7 AD 2d 850
People v. Hamilton, 18 AD 2d 671
People v. Richter, 245 AD 2d 767
People v. Daniels, 285 AD 619
People v. La Sister, 5 Misc. 2d 518

People v. Tolwin

Before: Brown, Guiotta + Groat

I — A. Introduction — for App/t
for Resp't

B. Reserve 3 minutes for rebuttal.

II — △ charged with viol. §1851 Penal Law. + found guilty.
[Read §1851]

— △ sentenced to $100 or 30 days.

III. — Facts

A. April 28 '62

(1) Daughtry, nephew - lives in same house as △. Charged with:

not guilty at separate trials { (a) D/C
(b) Assault 3rd

* same for Morton Byers.

(2) △ saw crowd + nephew - ~~fought~~ inquired as to what was going on.

(3) arrested - did not touch anyone but nephew

(4) saw police officer hit Doughtry.
* officer admits hitting Doughtry.
(pp. 42 + 43)

IV.

(1) People v. Drears, 15 AD 2d 204 (1st D't 61)
- Δ charged with loitering.
arrest for misdemeanor unlawful per se unless Δ is arrested.

(2) Revision of §177(1)

(3) People v. Popp - 19 Misc 2d 331 (1959)
right to intervene when there is an unlawful arrest.

People v. Henrietta Tolliver
Docket #18038
Court of Special Sessions

Charge: viol. §1851 PL.

"The District Attorney of the County of Kings, by this Information accuses the defendant of the crime of Resisting Public Officer in The Discharge of His Duty, committed as follows:

"The defendant, on or about April 28, 1962, in the County of Kings, wilfully resisted, delayed and obstructed a certain public officer, to wit, Arthur Matzel a Police Officer of the Police Dept. of the City of New York, in discharging a duty of his office in that the defendant did get between the officer and his prisoners, and the defendant attempted to get the prisoners away from the officer.

Bklyn N.Y. May 6th 1962.

Edward S. Silver
District Attorney

Arraigned April 28 '62 - Hon. Walter Bayer

13-2A - Crim. Ct. Kings MHA-5916

Re: Toliver (appeal)

P.L.

§ 521, ~~521~~

§§ 522-525

§ 537

§ 538

§521 - 30 days to appeal commences from date of sentencing. (sentenced, Jan. 9, 63; last day to appeal, Feb. 7, 1963)

§522. Appeal, how taken.

1. serve notice in duplicate on clerk with whom judgment roll is filed stating "Appellant appeals from the judgment"

§ 523 - Appeal (by Δ), how taken.

1. In addition to § 522, notice must be served upon DA of county where judgment was rendered. (Kings)

§ 537. atty's, w/i 5 days of appeal must give DA his appearance in order to be notified as to date of argument.

(2)

Tobias (appeal)

§538 - when appeal called for argument, a/t must furnish ct with copies of record

§535 - appeal to appellate division.
- notice of argument by either party upon 5 days notice, but not more than 90 days after last day to file notice of appeal.

Note: △ sentenced Jan 9, 1963 in part 1B, MA4-5916 by Judge Glowa - pd. $100.00 fine.
- conviction, Dec. 19, 1962

Part

1. violation —

~~2 take file pap~~

3 Appellate Term or Div.

Jan 10 Call D.

People v. Tolwin

Arthur Matzel - Recalled

Re-X

p42 - when Δ first came across stairs M didn't have gun in hand but did have night stick

p42 - M hit D 3 times; in presence of Δ; ~~D was~~

p43 M hit D in head and knock him down.

People v. Tolivier

Henrietta Tolivier - Δ

Direct Exam

p 9. - lives @ 522 McDonough St.

- related to Daughtry

- Coming from laundry & saw D & other boys. M had night stick & gun in hand and asked "what's the matter". M said to mind own business. Δ identified herself as aunt of D.

p 10 - seconds later Δ heard screams. M hit D on head with stick. Δ started to scream. Several cops hit Δ & forced her into car. Δ's skirt fell & when she went to pick it up M & other beat her. Blouse was torn off. D & 8 1/2 pct Δ handcuffed & pulled & beaten by M to floor & 1 dozen other officers beat D to floor.

Henrietta Tolins

p10 – △ did not pull on M's arm – he had right stick & gun; nor did she interfere with arrest; just asked "What's the problem"?

X-exam

p11 – △ doesn't know when M pulled the gun, but M had it out when △ first saw him.

p12 – D and others were against the wall.

p13 – M told △ to ~~stop~~ mind own business △ stepped about 8' away; △ was never when the bystanders (12) were standing.

p14. patrolman hit D on head with stick, △ screamed. A cop came out of car & pushed me in. D was in another car & "he" came over & with another cop & beat △ while client was talking

Henrietta Tolmer

X - exam (cont'd.)

p 14 — Δ was already screaming when cars came.

— Δ did not attempt to stop M from striking D; she just started to scream.

p 16 — M never struck D until he heard the sirens; then M + another hit Δ.

→ just M.

— the cop (ε) asked why Δ was screaming; ~~she~~ Δ said M was beating nephew (D) & they (?) were pushing Δ in car. Cot "that" time the patrolman put D in just car.

p 17 — the cop who asked Δ why she was screaming ~~told~~ told Δ to get into car.

— didn't say anything to cop. He pushed on her & tore off blouse.

People v. Tolmie

Henrietta Tolmie

Morton Bizer

Direct Exam

p18 - △ was not resisting getting into car; cop was pushing as △ stopped to pick up dress.

p19 - cop did not tell △ she was creating disturbance but did ask why she was screaming.

- when other police arrived they assisted M
- several assisted M
other came directly over to △. "Hey, "Mine if your business Stay out of this"

p31 x - (when M said) △ said "it's my nephew then the other officer started to grab her + beat her (the other officer from the police car)

p31 - Did not see △ beat back officer from arresting D

People v. Tolwin

Morton Byer

Direct Exam

p. 29. – lives @ 518 McDonough St.

– present when Δ arrested

p 30 – Δ came from laundry, M had D @ wall with fan; M hit D; Δ asked M what happened & why was he hitting D; M said "you stay out of this"; another officer came over; M hit D again & D fell to ground.

– all M said was "Stay out of this", "None of your business, Stay out of this".

p31 × – (when M said) Δ said he's my nephew. then the other officer started to grab her & beat her. (the other officer from the police car)

p31 – did not see Δ hold back officer from arresting D.

Morton Byer

p31 – Byer was arrested for D/C - charges were dismissed.

X-exam

p33 – first faced officer not wall

– about 12-14 people gathered.

– not long after being put against wall 1st saw Δ crossing street.

p34/35 – When Δ came towards M she asked subject going on; at that time D was already hit once; the sirens were already blowing.

p. 37 – after Δ identified herself M said to "Stay out of it.

p. 38 – When asked to do so Δ moved aside – she went near a car and started screaming after "he hit him."

Morton Byer

p 38 – Pt not heard Δ scream

p 39. – When Pt et al were first against the wall only one officer (prob. Matzel) was there; "Seconds later" another officer got out of a radio car.

p 40. – that officer) grabbed Δ + hit her; officer had no conversation with Δ – didn't see any conversation between M and the second officer.

p 41 – – then there were other officers, some assisting M + some the 2nd officer. The officer who hit Δ also hit Pt.

People v. Toliver

Arthur Matzel {complainant}

Direct ~~Exam~~

p. 2 — 4/28/62 on duty in uniform

— 9:25 p.m. Patchen Ave & McDonough St. Bklyn arrested Δ.

p. 2 + 3 ~~Δ~~ while M was placing D in sector car got between M & D & pulled on D. Δ refused to stop pulling after a warning M arrested Δ.

p 3. M doesn't know if Δ & D are related.

the answer is in the present tense, even after the Daughtry trial.

X - Exam

p 4. + p 7 Q "What was result of his trial? (Daughtry trial). A. "Dismissed reasonable doubt."

? which Daughtry trial?

People v. Tolmé

Herman Daughtry - aunt

p20 – lives @ 522 McDonough St.
– never convicted of a crime.

– △ is D's aunt.

p 20-21 – saw △ right arrested.

p21 – first saw △ ~~just~~ before H left him; there was hit + he was "blurred; heard △ say "What's going on"? then I was ~~kicked~~ in chest + hit.

– heard aunt hollering.

– didn't see ~~△~~ △ place hands on H.

p21-22 – on D/O + assault, after trial I acquitted.

~~X-exam~~

p.23 – at wall, I was facing the ~~the~~ officer, not wall.

(2)

Herman Daughtry

p23 – first saw Δ befor officer hit D.

p24 – Δ was coming across street.

p24 – when placed against wall about 12 people gathered.

– when Δ walked over officer already hit D.

p25 – after D struck, Δ talked to officer; he asked what was going on; doesn't recall much after that became cop hit him; he fell near a police car.

p-25 – heard siren just before being hit.

p26 – D was closer to officer than he was to Δ.

– D thinks that when Δ asked cop what happened cop said "Get back" & hit D again.

(13)

Herman Daughtry

p27 – D was getting ice from sidewalk when he saw police officer grab △.

– Does not know what was going on between cops & △ but did hear her screaming.

p28 – when △ came across street she did go towards H because he had a gun.

– D didn't see △ come towards her because he was "in a blur".

Notes

- If Doughty had the right to resist the arrest than Tolson under the Bozza decision would have the right to assist. The pivotal question is whether the DO charge ~~was~~ made out a prima facie case. ~~If~~ ~~Did~~ ~~the DO~~ the assault charged arose as an incident to the DO charge. If the latter warrant good the subsequent charge is no good.

~~Tolson~~

~~Was the DO charge~~

- At what point in the ct. proceedings was the charge against Doughty dropped?

People v. Tolwin

- ✓ People v. Brown, 225 NYS 157 ('62)
- ✓ People v. Daniels, 139 NYS2d 597 ('55)
- ✓ People v. Papp, 185 NYS2d 907 ('59)
- ✓ People v. Hochstim, 73 NYS 626, 638 ('01)
- ✓ People v. Dreares, 221 NYS 2d 819 ('61)
- ✓ People v. Tinston, 163 NYS. 2d 554 ('57)
- ✓ People v. LaSisler, 170 NYS 2d 702 (58)
- ✓ People v. Bomboy, 229 NYS 2d 323 ('62)
- ✓ People v. Hamilton, 237 NYS 2d 97, 18 AD 2d 871 ('63)
- ✓ People v. Isaac, 239 NYS 2d 624 ('63)
- ✓ People v. Cassone, 230 NYS 2d 822 ('62)
- ✓ Gill v. Montgomery Ward, 129 N.Y.S. 2d 288 ('54)
- ✓ People v. Gallo, 135 NYS2d 845 ('54)
- ✓ People v. Cherry, 307 N.Y. 308 ('54)
- ✓ People v. Richter, 40 NYS2d 751, 265 AD 767 ('43)
- ✓ People v. Massey, 181 NYS2d 473, 7 AD 2d 850 ('59)

SEDFRE REFERENCE STATE OF NEW YORK V. WILLIAMS et al. - CASE, CORRESPONDENCE, 1968-1969 Box 41 Folder 10

Historical Society of Wisconsin

Please Retain Original Order

5-6

NOTES ON COMMUNICATIONS RE. VICKI MORRIS BY R. KLEIN

FEB. 5- 8:00 PM- MOTHER OF VICKI MORRIS CALLED KLEIN to ADVISE RECEIPT OF BENCH WARRANT. & GIVE CURRENT ADDRESS OF V. MORRIS.- She said she asked V. MORRIS to CALL SEIFFRE (KLEIN) FEB 6. She ALSO SENT MESSENGER to V. MORRIS HOUSE.

10:00 PM- MOTHER called back to advise NO WORD.

11:00 PM- KLEIN called mother to determine IF MORRIS called.

FEB 6 NO CALL RECEIVED FROM V MORRIS
KLEIN Sent letter to MORRIS NEW address asking her to call. & giving both office & home tel. #

FEB 6 KLEIN ALSO SPOKE with WARRANT SQUAD to delay. execution on BENCH WARRANT of MORRIS.

FEB 9 9:30 PM- KLEIN Spoke w/ MOTHER gave home tel. #- advised by MOTHER that child not heard from V. MORRIS SINCE WED.- told her WARRANT stayed- least till TUES.

150 West 94th Street
New York, New York 10025
February 4, 1969

Carl Rachlin, Esq.
164 Madison Avenue
New York, New York

FEB 5 1969

Dear Mr. Rachlin:

I have spoken to Al Blumenthal, and he has told me of his conversation with you.

I hereby authorize you to proceed with whatever has to be done on my case. May I add that I am very appreciative of what has already been done. I had been assured by Percy Sutton years ago that I was in the clear, and as of last week, when I last spoke to him, he was still of that opinion. He had obviously confused this case with another.

I am sorry that there seems to have been diffidulty in getting in touch with me. The fact is that I have been listed in the Manhattan directory for the past five years, under my full name, and could have been reached at any time. The address of record in my case is the same address where my parents still reside, and the notice ordering me to appear on February 11 is the first communication I have received regarding this case since 1963.

If for any reason you find that you cannot appear personally on Tuesday, and must send someone else from your office, I would like to be informed. My home telephone number at home is MO 6-6302. I am enclosing my business card, and I have an answering service on that telephone from 9 to 5.

Please excuse the paper, typing, etc. I am at this moment in Albany on a lobbying trip, but I am anxious to write to you without further delay.

I will see you in court on Tuesday.

Sincerely yours,

Elizabeth Elkind

Elizabeth Elkind

ARA
ABORTION REFORM ASSOCIATION, INC.
149 West 93 Street, New York, N.Y. 10025
(212) 663-3175
ELIZABETH ELKIND
Executive Director

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE TERM, FIRST DEPARTMENT

PEOPLE OF THE STATE OF NEW YORK, Respondent -against- LESTER WILLIAMS, VICKI MORRIS, RAYMOND G. GARDNER, WILLIE BLACKMAN, STEVEN FRIEDER, and JEFFREY GLICK, Defendants-Appellants	Index No. 40860/1966

BRIEF FOR DEFENDANTS-APPELLANTS

Carl Rachlin
Stephen M. Nagler
Attorneys for Defendants-Appellants
164 Madison Avenue
New York, New York 10016
Tel. No. 212-532-8216

INTRODUCTORY STATEMENT

This is an appeal from a judgment of the Criminal Court of ths City of New York, County of New York, before Hon. Benjamin Gassman (Presiding Judge) and Hons. Evelyn Richman and Arthur Dunaif (Associate Judges), convicting all defendants-appellants of violating Section 2036 of the Former Penal Law and all defendants-appellants except Glick and Frieder of violating Section 1851 of the Former Penal Law. All were sentenced on or about August 29, 1963, to thirty days (suspended sentence) in the City Prison on the charge of violating Section 2036 and those convicted of violating Section 1851 were given a ten-day sentence in addition.

An appeal to this Court was taken by filing a Notice of Appeal in the office of the Clerk and serving a copy of such Notice on the District Attorney of New York County on or about September 12, 1963. A stipulation was then entered into by which the disposition of the within appeal would be determined by the result of an appeal in the case of People v. Lawson, 16 N.Y. 2d 552, 260 N.Y.S.2d 661 (1965).

On or about October 21, 1966, defendant-appellant Morris moved this Court for an order allowing her to appeal in forma pauperis. This motion was granted at the following term. This motion was granted at the following term. On September 10, 1968, this Court vacated an order dated November 8, 1967, dismissing the within appeal, and ordered the appeal perfected for the November, 1968 term.

TABLE OF CONTENTS

	Pages
Introductory Statement	1
Statutes Involved	2-3
Statement of Facts	4-5
Argument	6-11
POINT I Defendants-Appellants Did Not Enter the Building Unlawfully and Therefore Cannot Be Guilty of a Violation of Section 2036 of the Former Penal Law.	6-8
POINT II Reversal of Defendants-Appellants Convictions for Violation of Section 2036 Requires Reversal of Their Convictions for Violation of Section 1851	9-11
Conclusion	12

STATUTES INVOLVED

FORMER NEW YORK PENAL LAW, SECTION 1851. RESISTING PUBLIC OFFICER IN THE DISCHARGE OF HIS DUTY. (Repealed as of September 1, 1967)

"A person who, in any case or under any circumstances not otherwise specifically provided for, wilfully resists, delays, or obstructs a public officer in discharging, or attempting to discharge, a duty of his office, is guilty of a misdemeanor."

FORMER NEW YORK PENAL LAW, SECTION 2036. UNLAWFUL INTRUSION ON REAL PROPERTY. (Repealed as of September 1, 1967)

"A person, who intrudes upon any lot or piece of land within the bounds of a city or village, without authority from the owner thereof, or who erects or occupies thereon any hut, or other structure whatever without such authority; and a person who places, erects, or occupies within the bounds of any street or avenue of a city or village, any hut, or other structure, without lawful authority, is guilty of a misdemeanor."

NEW YORK PENAL LAW, SECTION 140.00. CRIMINAL TRESPASS AND BURGLARY; DEFINITIONS OF TERMS (Effective September 1, 1967)

"5. "Enter or remain unlawfully." A person "enters or remains unlawfully" in or upon premises when he is not licensed or privileged to do so. A person who, regardless of his intent, enters or remains in or upon premises which are at the time open to the public does so with license and privilege unless he defies a lawful order not to enter or remain, personally communicated to him by the owner of such premises or other authorized person. A license or privilege to enter or remain in a building which is only partly open to the public is not a license or privilege to enter or remain in that part of the building which is not open to the

public. A person who enters or remains upon unimproved and apparently unused land, which is neither fenced nor otherwise enclosed in a manner designed to exclude intruders, does so with license and privilege unless notice against trespass is personally communicated to him by the owner of such land or other authorized person, or unless such notice is given by posting in a conspicuous manner."

NEW YORK PENAL LAW, SECTION 140.10. CRIMINAL TRESPASS IN THE SECOND DEGREE (Effective September 1, 1967)

"A person is guilty of criminal trespass in the second degree when he knowingly enters or remains unlawfully in a building or upon real property which is fenced or otherwise enclosed in a manner designed to exclude intruders."

NEW YORK PENAL LAW, SECTION 205.30. RESISTING ARREST (Effective September 1, 1967)

"A person is guilty of resisting arrest when he intentionally prevents or attempts to prevent a peace officer from effecting an authorized arrest of himself or another person."

STATEMENT OF FACTS

On August 1, 1963, at approximately 6:15 P.M. seven persons including the six defendants-appellants entered a building owned by Hon. Nelson Aldrich Rockefeller, Governor of the State of New York, located at 22 West 55th Street in the County of New York. The building contained the executive offices of Governor Rockefeller and a Press Room located on the first floor.

On July 10, 1963, seven persons (including defendant-appellant Morris) who were members of the Joint Committee on Equal Opportunity had met with Hon. Alexander Aldrich, Director of the New York State Division for Youth, to protest continued discrimination against Negroes and Puerto Ricans in the Building and Trades Unions in the City and State of New York. The Joint Committee on Equal Opportunity included representatives from the Urban League, the National Association for the Advancement of Colored People, the Congress of Racial Equality, and the Negro American Labor Council. These seven persons were given permission at the end of the discussion to remain in the Press Room located in the building at 22 West 55th Street, to use a bathroom, to use three telephones during the day, to replace members of the Joint Committee who were there, and to enter and leave the building. They were told to have no more than nine people in the Press Room and/or the building at any one time (p.20-Mr. Aldrich-People-Direct). They had permission to use the stairs and hall into the Press Room. No date was set for the end of the demonstration. They were required to sign

in at the reception desk located at the top of five or six steps from the street entrance. Throughout the entire demonstration from July 10, 1963 to August 1, 1963, the participants were peaceful; there was no disorder or violence of any kind.

At the time the seven persons entered the building at 22 West 55th Street at about 6:15 P.M. there were three other persons in the Press Room. Mr. William J. Leahy, a security officer, requested that one member of the group of seven leave so that the limit of nine would not be exceeded (p.119-Mr.Leahy-People-Direct). None of the group of seven left. Mr. Leahy then spoke to the three people in the Press Room, told them there were seven outside, and asked if one of the three would leave, but none left (p.119-Mr.Leahy-People-Direct).

The police were summoned. The activities of the seven from about 7:10 when the police arrived to their arrest at approximately 8:00 P.M. consisted of singing and occasionally holding hands, and according to the testimony of Detective Captain Leonard J. Flanagan, who arrived at the building at about 7:10 P.M. and witnessed the arrest, he was able to go up and down the stairs on two occasions without stepping over any of the steps (p.202-Det.Capt.Flanagan-Cross). When the group of seven people refused to leave voluntarily, they were arrested. Defendants-appellants Frieder and Glick arose from their sitting position and walked out. The other defendants-appellants remained in their sitting position and were carried out of the building a distance of about fifteen feet to a patrol wagon. None of those arrested attempted to flee, assault the police, or otherwise actively resist or evade arrest.

POINT I

DEFENDANTS-APPELLANTS DID NOT ENTER THE BUILDING UNLAWFULLY AND THEREFORE CANNOT BE GUILTY OF A VIOLATION OF SECTION 2036 OF THE FORMER PENAL LAW.

The case at hand is virtually identical to People v. Lawson, 44 Misc. 2d 578, 254 N.Y.S.2d 300 (Sup. Ct.,App. Term,1st Dept.), aff'd 16 N.Y.2d 252, 260 N.Y.S.2d 661 (1965). In Lawson, Judge Gold of the Appellate Term stated:

> "In this court's opinion, section 2036, supra, in clear and unambiguous language, makes criminal only an unauthorized entry upon real property. It does not purport to make criminal a refusal to leave property which has been lawfully entered." 44 Misc.2d 578, 580, 254 N.Y.S.2d 300, 302.

In Lawson six defendants entered a renting office and refused to leave the premises on the owner's request. Their arrest and subsequent conviction for violation of Section 2036 was reversed by the Appellate Term (1st Dept.). The Court noted that criminal intent must accompany an intrusion to constitute a violation of Section 2036, and since the defendants had entered the renting office at the implied invitation of its owner, there could have been no criminal intent. As noted above, the Court of Appeals affirmed.

In the instant case, defendants-appellants entered the building pursuant to an agreement which had been in effect from July 10, 1963, to August 1, 1963 and permitted defendants-appellants to enter and leave the building at will. In fact when the security officer saw that seven persons had entered the building and none of the seven would leave, he

asked that one of the three persons in the Press Room leave so that there would be no more than nine people. Even if the agreement between the defendants-appellants and the Governor could be terminated at will, the security officer did not order all the defendants-appellants to leave the building as soon as they entered thus indicating that their entry was lawful.

Nothing in the record indicates that the defendants-appellants knew at the time they entered the building that there were three other persons present in the Press Room. When the seven persons entered the building, since they were less than nine in number, they could reasonably believe they were in accord with the agreement with Governor Rockefeller for the use of his property, and therefore their entry was legal. If there was a violation of this agreement it did not occur because of any act of defendants-appellants. If the purpose of the agreement between Governor Rockefeller and the Joint Committee on Equal Opportunity was to insure a peaceful demonstration, this was clearly achieved.

Since defendants-appellants' entry was authorized pursuant to their agreement with Governor Rockefeller, their conviction for violation of Section 2036 must, according to Lawson, be reversed.

Reversal of their conviction will not affect similar conduct today since Penal Law Section 140.10 provides:

> "A person is guilty of criminal trespass in the second degree when he knowingly enters or remains unlawfully in a building or upon real property which is fenced or otherwise enclosed in a manner designed to exclude intruders."

This section is clarified by the definition of "enter or remain unlawfully" contained in Penal Law Section 140.00 (5):

> "A person"enters or remains unlawfully" in or upon premises when he is not licensed or privileged to do so. A person who, regardless of his intent, enters or remains in or upon premises which are at the time open to the public does so with license and privilege unless he defies a lawful order not to enter or remain, personally communicated to him by the owner of such premises or other authorized person...."

Under the new law, regardless of whether the seven defendants-appellants entered the building with license or when it was open to the public, their refusal to obey a lawful order to leave might be a violation of Penal Law Section 140.10; whereas it was not a violation of Former Penal Law Section 2036, according to Lawson provided the entry, as was true here, was authorized.

POINT II

REVERSAL OF DEFENDANTS-APPELLANTS CONVICTIONS FOR VIOLATION OF SECTION 2036 REQUIRES REVERSAL OF THEIR CONVICTIONS FOR VIOLATION OF SECTION 1851.

Defendants-appellants Williams, Morris, Gardner, and Blackman were convicted of resisting arrest because instead of walking out of the building they remained in their sitting position and were carried out of the building by the police. Reversal of their convictions is warranted on two grounds.

First, conviction under Section 1851 of the Former New York Penal Law requires both conviction on the underlying charge and separate proof of a violation of Section 1851. Acquittal of the primary charge serves to make the arrest illegal:

> "Defendant's prior acquittal of the crime for which he was arrested consequently established the arrest to have been unlawful, and he was therefore entitled to resist such an arrest with reasonable force (People v. Cherry, 307 N.Y. 308)." People v. Dreares, 15 A.D.2d 204, 206, 221 N.Y.S.2d 819, 821 (1st Dept. 1961), aff'd 11 N.Y.2d 906, 182 N.E.2d 812, 228 N.Y.S.2d 467.

In People v. Galamison, 42 Misc.2d 387, 248 N.Y.S.2d 358 (1964), Judge Helfand, addressing himself to the specific problem of demonstration cases, said:

> "According to the rule laid down in People v. Dreares,... if a defendant is charged both with disorderly conduct and resisting arrest, the latter charge must fall if he is acquitted or discharged on the former because, in such an event, defendant's original underlying arrest for disorderly conduct is deemed to have been unlawful, entitling him to use reasonable force to resist it." 42 Misc.2d at 393, 248 N.Y.S.2d at 362.

Judge Fuld in People v. Cherry, 307 N.Y. 308, 121 NE. 2d 238 (1964), indicated the type of force which may be used to prevent an unlawful arrest:

> "If force is necessary to prevent an unlawful arrest, then force may be employed, the one limitation on its exercise being that the victim may not pursue his counterattack merely for the sake of revenge or the infliction of needless injury." 307 N.Y. at 311, 121 N.E. 2d at 240.

Since defendants-appellants, by remaining in their sitting position, neither attempted to obstruct nor assault the arresting officers, their mere refusal to go with the police in effecting their own arrest creates no violation of Section 1851 since in no way did they actively interfere with any possible police duty, by creating a new circumstance after the arrest under Section 2036, see People v. Cherry, supra.

Second, the convictions for violation of Sections 1851 and 2036 are both based solely on defendants-appellants having remained in a sitting position and therefore the separate sentences imposed constitutes double punishment for the same act. Defendants-appellants did not become limp or sit down either when warned or actually arrested, rather they had been sitting during the entire period the police were present; their act of sitting was the basis for their initial arrest. One continuous act was thus made the basis for two crimes. The Court of Appeals in People ex rel. Maurer v. Jackson, 2 N.Y. 2d 259, 264, 140 N.E. 2d 282, 284, 159 N.Y.S 2d 203, 206 (1957) stated that "...if there was merely a single inseparable act violative of more than one statute, or if there were an act which itself violated one statute and was a material element of the violation of another, there would have to be single punishment (cases cited)." (Emphasis by the court).

The instant case, unlike People v. Crayton, 55 Misc. 2d 213, 284 N.Y.S. 2d 672 (App. Term, 1st Dept., 1967) in which this Court

affirmed convictions for violations of Section 722 (2) and 1851, involves lawful entry pursuant to an agreement. In Crayton, the defendants by entering City Hall over the objection of the police, and then later, and after being asked to leave, sat down, committed two separate and distinct acts each of which might be separately punished; in the instant case the entry was lawful and the sitting down occurred prior to any arrest.

The importance of intent in determining whether a course of conduct constitutes multiple crimes cannot be overstressed. We commend to the Court's attention the reasoning of Justice Traynor of the Supreme Court of California:

> "Whether a course of criminal conduct is divisible and therefore gives rise to more than one act within the meaning of section 654 [proscription against multiple punishment of a single act] depends on the intent and objective of the actor. If all of the offenses were incident to one objective, the defendant may be punished for any one of such offenses but not for more than one." (Neal v. State of California, 55 Cal.2d 11, 19, 9 Cal. Rptr. 607, 611, 612, 357 P2d 839, 843-844, 1960, cert. denied 365 U.S. 823, 81 S.Ct. 708, 5 L.Ed.2d 700).

CONCLUSION

For the reasons stated above, the convictions of the defendants-appellants should be reversed and the charges against them dismissed.

Respectfully submitted,

Carl Rachlin
Stephen M. Nagler
Attorneys for Defendants-
Appellants
164 Madison Avenue
New York, New York 10016
Tel. No. 212-532-8216

New York, New York

October 21, 1968

Statement Pursuant to Rule 5531 CPLR

(1) The index number of this case in the Appellate Term, First Department was 40860/1966.

(2) The full names of the original parties are: The People of the State of New York vs. Lester Williams, Vicki Morris, Raymond G. Gardner, Elizabeth Elkind, Willie Blackman, Steven Frieder, and Jeffrey Glick. Elizabeth Elkind was one of the original seven defendants and her name was added to the ~~decision~~ order of the Appellate Term, First Department by court-approved stipulation

(3) The action was commenced in the Criminal Court, City of New York, County of New York.

(4) The action was commenced upon the filing of sworn complaints on August ____, 1963. Each of the defendants pleaded Not Guilty on August ____, 1963.

5. This is a ~~Action~~ prosecution for resisting arrest pursuant to Section 1851 of the former Penal Law (CONVICTIONS affirmed by Appellate Term) and ~~unlawful entry~~ UNLAWFUL INTRUSION ON Real Property pursuant to Section 2036 (CONVICTIONS reversed by Appellate term) against a group of individuals arrested ~~in the Executive offices of Governor Rockefeller~~ during a protest against racial discrimination in the building trades unions in New York City.

6. This is an appeal by LESTER WILLIAMS, VICKI MORRIS, RAYMOND G. GARDNER, ELIZABETH ELKIND and ~~Willie~~ WILLIE BLACKMAN from that part of an order of the Appellate Term of the Supreme Court of New York, First Department, entered JAN 23, 1969, which ~~affirmed~~ affirmed the judgment ~~of conviction~~ of the New York City Criminal Court, New York County, rendered on August 29, 1963, ~~convicting~~

OF CONVICTION FOR Violation of Section 1851 of The former New York Penal Law

Leave to appeal to the Court of Appeals was granted by Hon. Stanley H. Fuld, Chief Judge of the Court of Appeals, on May 2, 1969.

7. The appendix method is being used on this appeal.

INTRODUCTION

~~SUMMARY OF ARGUMENT~~

THIS ~~REPLY~~ BRIEF IS ADDRESSED TO THE FOLLOWING POINTS ~~URGED BY RESPONDENT~~:

1. WHETHER DEFENDANTS' ACTS, UNDER THE CIRCUMSTANCES, ESTABLISHED THEIR GUILT OF THE CRIME OF UNLAWFUL INTRUSION ON REAL PROPERTY?

1. WHETHER DEFENDANTS' CONVICTIONS FOR RESISTING PUBLIC OFFICER IN THE DISCHARGE OF HIS DUTY SHOULD BE AFFIRMED EVEN IF THE CONVICTIONS FOR THE SAME ACTS FORMING THE BASIS FOR THE ARRESTS ARE REVERSED?

2. WHETHER THE POLICE HAD REASONABLE GROUNDS TO BELIEVE A CRIME WAS BEING COMMITTED, DESPITE THE FACT THAT AT THAT TIME REFUSAL TO LEAVE AFTER AUTHORIZED ENTRY WAS NOT A CRIME?

3. WHETHER DEFENDANTS WERE REQUIRED AFFIRMATIVELY TO ASSIST IN EFFECTING THEIR OWN ARRESTS EVEN THOUGH THEIR CONDUCT WAS NOT ILLEGAL?

5. WHETHER THE SENTENCING OF DEFENDANT-APPELLANT MORRIS WAS PROPERLY SET FORTH IN DEFENDANTS-APPELLANTS' BRIEF?

~~POINT II~~ POINT I

WHETHER DEFENDANTS' CONVICTIONS FOR RESISTING PUBLIC OFFICER IN THE DISCHARGE OF HIS DUTY SHOULD BE AFFIRMED ~~EVEN IF~~ ALTHOUGH THE CONVICTIONS FOR THE SAME ACTS FORMING THE BASIS FOR THE ARRESTS ~~WERE REVERSED~~ WERE REVERSED

INSERT A →

← INSERT A

Section 177, subdivision 1 of the Code of Criminal Procedure, as amended July 1, 1963, provides that a police officer may arrest without a warrant when he "has reasonable grounds for believing a crime is being committed in his presence." Prior to July 1, 1963, if a person was arrested for committing a crime, and also charged with Resisting Public Officer in the Discharge of His Duty (Former Penal Law Section 1851) arising out of the same circumstances, the charge of violating Section 1851 fell if the party charged was found innocent of the underlying charge and if only reasonable force was used to resist the arrest.

The District Attorney ~~says~~ ARGUED IN the COURT BELOW that after July 1, 1963, even though a person is innocent, and knows he is innocent of the underlying charge, he can be convicted of violating Section 1851 if he remains seated and does not follow the police to the paddy-wagon. If this interpretation of Section 1851 is adopted by this Court, citizens will be denied the right to resist unlawful police conduct. Further, there is no authority for concluding that because an arrest is lawful, conviction for violation of Section 1851 should be affirmed if the underlying charge is dismissed.

P. ON JANUARY 23, 1969,

The Appellate Term, First Department "Unanimously Reversed on the Law" ~~and dismissed~~ the Judgment of Conviction of Defendants-Appellants for violation of Section 2036, ~~of the Former New York Penal Law~~, (N.Y.L.J., ~~Jan 23~~ ~~in accord with the decision of this~~ stating

INSERT ^

that "[R]efusal to leave premises after having lawfully entered was not a crime under ~~the~~ Section 2036 of the former Penal Law, citing ~~this Court in~~ People v. LAWSON, 16 NY2d 552, 260 NYS.2d 661 (1965).

POINT II

WHETHER THEPOLICE HAD REASONABLE GROUNDDS TO BELIEVE A CRIME WAS BEING COMMITTED, DESPITE THE FACT THAT AT THAT TIME REFUSAL TO LEAVE AFTER AUTHORIZED ENTRY WAS NOT A CRIME?

The mere refusal of the defendants-appellants to obey a security offieer's request to leave the building(even though their entry was authorized by Governor Rockefeller and they were not committing a crime by remaining as established by this Court in People v. Lawson, supra) did not give the police"reasonable grounds" for the arrest as required by Section 177, subdivision 1 of the Code of Criminal Procedure.

~~the Code of Criminal Procedure.~~ However Section 2036 (Former Penal Law) defines an unlawful intrusion as one "without authority from the owner thereof," and since the record proceeds on the assumption that the police were aware the entry was authorized, the clear language of Section 2036 must prevail, and this Court should rule as a matter of law, that the police had no reasonable grounds to believe Section 2036 was being violated, and therefore the arrests were unlawful and could be resisted with reasonable force.

~~POINT II~~ POINT III

WHETHER DEFENDANTS WERE REQUIRED AFFIRMATIVELY TO ASSIST IN EFFECTING THEIR OWN ARRESTS EVEN THOUGH THEIR CONDUCT WAS NOT ILLEGAL?

Defendants-appellants did not, ~~contrary to respondent's conclu-sion~~, "wilfully" resist, delay, or obstruct their arrest and therefore they did not violate Section 1851. Defendants-appellants did not become limp or sit down either when warned or actually arrested. Sitting during the entire period the police were present, their conduct was essentially the same before and after the police arrived. Their act of sitting was the basis for their initial arrest for alledged violation of Section 2036. Without proof of specific intent, their conduct should not be considered "wilfully" designed to resist, delay, or obstruct the police.

The requirement of specific intent in an analogous statute was considered by Judge Finch writing for the majority in People v. Katz, 290 N.Y. 361, 49 N.E.2d 482 (1943). Judge Finch, in ruling that reversible error was committed by failing to instruct the jury, over objection, that a specific intent is necessary stated as follows:

> "Outside of a narrow class of exceptions, punishment is meted out by the law of crimes for a specific unlawful intent. The words in subdivision three of the statute defining assault in the second degree reasonably imply the necessity of specific intent. The words of the statute are"wilfully and wrongfully wounds or inflicts grievous bodily harm upon another ***." (Penal Law § 242) In other words, as the statute reads, the requirement as to intent is co-extensive with the act prohibited. If the legislative intent were otherwise, the statute would read 'a person who with intent to injure inflicts grievous bodily harm.'" 290 N.Y. at 365, 49 N.E.2d at 484.

Inasmuch as none of the defendants-appellants attempted to flee, assault

the police, or otherwise actively resist or evade arrest, and in fact in no way changed their positions, there is no basis for inferring specific intent to resist, delay, or obstruct the police.

People v. Fidler, 280 A.D. 698, 117 N.Y.S.2d 313 (1952), reversed on other grounds, cited by Respondent in his Appellate Term Brief to support his argument that defendants-appellants' conduct violated Section 1851 involves, unlike the instant case, active interference by a truck-owner and his drivers with the statutory right of the police to inspect the owner's vehicles. The active interference included the refusal of the drivers to drive the trucks on portable scales, the shutting off of the motors, the removal and retention of the ignition keys, and the locking of some of the cab doors. The owner Fidler refused to turn over the keys so the trucks could be weighed and refused to order his drivers to turn over the keys or drive the trucks on the scale. The Court, however, states the following:

> "It is unnecessary to do more in the case before us than to say that the refusal to drive the trucks on the scales was not itself a violation of any specified command of a statute and had there been a naked refusal to act, occurring in isolation, this alone might not have been sufficient to constitute a violation of section 1851." 280 A.D. at 704.

The conduct of defendants-appellants was clearly "a naked refusal to act" and their conviction for violation of Section 1851 should be reversed.

INSERT A

The instant case, unlike People v. Crayton, 55 Misc. 2d 213, 284 N.Y.S. 2d 672 (App. Term, 1st Dept., 1967) in which the Appellate Term ~~this Court~~ affirmed convictions for violations of Section 722 (2) and 1851, involves lawful entry pursuant to an agreement. In Crayton, the defendants by entering City Hall over the objection of the police, and then later, and after being asked to leave, sat down, committed two separate and distinct acts each of which might be separately punished; in the instant case the entry was lawful and the sitting down occurred prior to any arrest.

CONCLUSION

For the reasons stated above, the convictions of the defendants-appellants should be reversed and the charges against them dismissed.

Respectfully submitted,

Carl Rachlin
~~Stephen M. Nagler~~
Attorneys for Defendants-
Appellants
164 Madison Avenue
New York, New York 10016
Tel. No. 212-532-8216

New York, New York

~~November 29, 1968~~
MAY 15, 1969

Supreme Court
of the
State of New York

THEODORE REITMAN
CLERK

APPELLATE TERM OF THE SUPREME COURT
FIRST JUDICIAL DEPARTMENT
(ROOM 1615)
NEW YORK COUNTY COURT HOUSE
100 CENTRE STREET
NEW YORK, N. Y. 10013

October 24, 1968

Mr. Carl Rachlin
164 Madison Avenue
New York, N.Y. 10016

Re: Peo. v. Lester Williams, et al
Cal. #540-1968

Dear Sir:

Your attention is called to the fact that the order of this court filed on September 10, 1968 vacating a dismissal under Rule III, did not include the defendant, Elizabeth Elkind.

Please advise this court whether this omission is by inadvertence or not, and whether her appeal is being prosecuted. It was also noted that, the name of the defendant, Elizabeth Elkind did not appear in the title on the appellant's brief filed by your office.

Yours truly,

Theodore Reitman

Theodore Reitman
Clerk

CHHgjm

At an Appellate Term of the Supreme Court, First Department, held on the County Court House, Borough of Manhattan, City of New York, on the 23rd *day of* January 1969

Present:—Hon. SAUL S. STREIT, *J.P.*

" " SAMUEL M. GOLD,

" " SAMUEL H. HOFSTADTER, *Justices*

I hereby certify that the foregoing paper is a true copy of the original thereof, filed in my office on the

JAN 23 1969

THEODORE REITMAN
Clerk of the Appellate Term,
Supreme Court, First Department

Date JAN 23 1969

THE PEOPLE OF THE STATE OF NEW YORK

Respondent,

vs.

LESTER WILLIAMS, VICKI MORRIS, RAYMOND G. GARDNER, WILLIE BLACKMAN, STEVEN FRIEDER and JEFFREY GLICK,

Defendants-Appellants

December No. 540

An appeal having been taken to this court by defendants

from a judgment of conviction of the Criminal Court of the City of New York, County of New York, after trial before Hons. Glassman, Richman and Dunaif, on the 29th day of August 1963, upon the charges of violation of P.L. §§ 2036 & 1851 (Frieder & Glick not guilty of P.L. § 1851), and having been sentenced by Hons. Gassman, Richman and Dunaif on the 29th day of August, 1963, as follows:

P.L. § 2036 - 30 days Workhouse - Sentence Suspended
P.L. § 1851 - 10 days City Prison

and the said appeal having been heard and due deliberation having been had thereon,

of conviction under Penal Law, Sec. 2036

IT IS ORDERED AND ADJUDGED that the said judgment so appealed from be and the same is hereby reversed on the law and complaint dismissed.

Judgment of conviction under Penal Law, Sec. 1851 affirmed.

Enter

SSS

Justice Appellate Term
Supreme Court, First Department

M E M O

TO: RICHARD KLEIN

FROM: Carl Rachlin

DATE: 29 January 1969

SUBJECT: VICKY MORRIS AND THE COURTS

1. Conviction reversed as to Sect. 2036, affirmed as to Sect. 1851

I suppose we ought to move for leave to appeal to the Court of Appeals. Check the proceedings on this ~~and~~ & as to the time limits.

Ed Brown in the clerk's office at 100 Centre Street is awaiting a letter from us stating that we are making application for leave to appeal. This is important in light of their power, if they choose to exercise it, to call everyone in to save time.

2. John Somers just called to advise that he won a victory after trial in the Packey O'neil case.

VICKY MORRIS —
107 W 82
NY

c/o KRAUSS
APT 1C

/bg

Dear Mr. Klein; 2/5/69

Unless I receive a communication from you as to the disposition of my case as per discussion with your office on Fri, Jan, 31, 1969, I will write a complaint to the N.Y. Bar Association. I left an address with you some time ago and another on the above date.

Sincerely,
V. Morris

Notice of Appeal to the Court of Appeals

NEW YORK CITY CRIMINAL COURT

New York County

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent

against

LESTER WILLIAMS, VICKI MORRIS, RAYMOND G. GARDNER, ELIZABETH ELKIND, WILLIE BLACKMAN, STEVEN FRIEDER, and JEFFREY GLICK,

Defendants-Appellants.

SIR:

PLEASE TAKE NOTICE that, pursuant to a certificate granting leave to appeal to the New York Court of Appeals issued by Hon. Stanley H. Fuld, Chief Judge of the New York Court of Appeals, on May 2, 1969, the Defendants-Appellants hereby appeal to the New York Court of Appeals from that part of an order of the Appellate Term of the Supreme Court of New York, First Department, entered on January 23, 1969, which affirmed the convictions of Defendants-Appellants LESTER WILLIAMS, VICKI MORRIS, RAYMOND G. GARDNER, ELIZABETH ELKIND, and WILLIE BLACKMAN for violation of Section 1851 of the Former Penal Law of New York pursuant to a judgment of this Court rendered on August 29, 1963.

Dated: New York, New York, May 12, 1969

Yours, etc.,

CARL RACHLIN, ESQ.
Office and P.O. Address
164 Madison Avenue
New York, New York 10016
Tel. No. 212-532-8216
Attorney for Defendants-Appellants

Notice of Appeal to the Court of Appeals

NEW YORK CITY CRIMINAL COURT

New York County

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent

against

LESTER WILLIAMS, VICKI MORRIS, RAYMOND G. GARDNER, ELIZABETH ELKIND, WILLIE BLACKMAN, STEVEN FRIEDER, and JEFFREY GLICK,

Defendants-Appellants.

SIR:

PLEASE TAKE NOTICE that, pursuant to a certificate granting leave to appeal to the New York Court of Appeals issued by Hon. Stanley H. Fuld, Chief Judge of the New York Court of Appeals, on May 2, 1969, the Defendants-Appellants hereby appeal to the New York Court of Appeals from that part of an order of the Appellate Term of the Supreme Court of New York, First Department, entered on January 23, 1969, which affirmed the convictions of Defendants-Appellants LESTER WILLIAMS, VICKI MORRIS, RAYMOND G. GARDNER, ELIZABETH ELKIND, and WILLIE BLACKMAN for violation of Section 1851 of the Former Penal Law of New York pursuant to a judgment of this Court rendered on August 29, 1963.

Dated: New York, New York, May 12, 1969

Yours, etc.,

CARL RACHLIN, ESQ.
Office and P.O. Address
164 Madison Avenue
New York, New York 10016
Tel. No. 212-532-8216
Attorney for Defendants-Appellants

Copy to:

CLERK, NEW YORK CITY CRIMINAL COURT
New York County
100 Centre Street
New York, New York 10013

HON. FRANK S. HOGAN
District Attorney for New York County
155 Leonard Street
New York, New York 10013
Attorney for Respondent

State of New York
Court of Appeals

BEFORE: HON. STANLEY H. FULD, Chief Judge

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

against

LESTER WILLIAMS, VICKI MORRIS, RAYMOND G. GARDNER, WILLIE BLACKMAN, STEVEN FRIEDER, and JEFFREY GLICK, and ELIZABETH ELKIND

Defendants-Appellants.

CERTIFICATE GRANTING LEAVE

BAIL

I, STANLEY H. FULD, Chief Judge of the Court of Appeals of the State of New York, do hereby certify that in the record and proceedings herein questions of law are involved which ought to be reviewed by the Court of Appeals and pursuant to §520 of the Code of Criminal Procedure permission is hereby granted to the above named appellants to appeal to the Court of Appeals.

I further certify that in my opinion there is reasonable doubt whether the judgment of conviction will stand upon appeal to the Court of Appeals.

Bail as at present provided is fixed pending appeal to the Court of Appeals in the sum of $1.00 (for each of above defendants) on condition, however, that the case is brought on for argument during the week of May 26, 1969.

Dated at New York, New York
May 2, 19 69.

Stanley H. Fuld
Chief Judge

Notice: Within 15 days from the date hereon an appeal must be taken and this certificate must be filed with the notice of appeal. An appeal is taken by filing in the clerk's office having the judgment roll (trial court) a written notice in duplicate that appellant appeals to the Court of Appeals (§522, Code Crim. Pro.) together with proof that another copy of the notice of appeal has been served upon opposing counsel (§521, Code Crim. Pro.). The appeal must be argued within 90 days from the date of the notice of appeal (§536, Code Crim. Pro.)

13 GR 1:12

SEDFRE

N.Y.C. Welfare Dept. Sit-In, N.Y.C. - affidavit notes
1966

Historical Society of Wisconsin

Please Retain Original Order

Box 41
Folder 12

CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK:Part 11 A

PEOPLE OF THE STATE OF NEW YORK

-against-

OZELLA DAVIS
Defendant

OZELLA DAVIS, being duly sworn deposes and says:

1 I was arrested on September 14, 1966 and charged with violating sections 722, 2036,2092 and 2093 of the penal law A preliminary hearing was held on January 4, 1967, and as appears below I cannot afford to purchase minutes of the hearing nor other material which my attorney advises me is necessary to the defense of my case.

2. I am thirty-three years of age, married, and have eight dependents.

3. My husband earns $71.- a week. I am unemployed

4. I receive supplementary assistance from the Department of Welfare. My eight children receive assistance from the Aid To Dependent Children's Program. I have no other source of income.

5. I have no savings, checking account, stocks or bonds whatsoever. Nor do I own an automobile or any real property.

6. The only personal property I own is used clothing of the value of approximately $250.- and furniture of approximately $150.-

7. I have asked Stephen M.Nagler to represent me in this case and he has consented to do so without fee. Furthermore I have not paid counsel or any other fees at any stage of these

have not paid counsel or any other fees at any stage of these proceedings because Stephen M. Nagler has donated his services without any compansation whatsoever.

8. I do not have sufficient funds to pay the cost of transcription of the minutes of hearing, to retain counsel, or to pay any of the other costs, fees or expenses necessary to the defense of this case.

9. On information and belief, all of my co-defendants are welfare recipients and none of them can afford the cost of minutes of the case or any legal fees.

10. I am not now incarcerated, and I am innocent of the charges against me.

11. I have been assisted in the preparation of this affidavit by Stephen M. Nagler, Esq.

12. No previous application for the relief sought herein has been made to this or any other court.

WHEREFORE, I respectfully request that the minutes of hearing and all subsequent proceedings be provided to me at the expense of the State, and that I be allowed to proceed as a poor person.

Ozella Davis

Sworn to before me this
day of 1967

CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: Part IIA

PEOPLE OF THE STATE OF NEW YORK

-against-

MAUDE BUGGETT,
Defendant

MAUDE BUGGETT, being duly sworn deposes and says:

1. I was arrested on September 14, 1966 and charged with violating sections 722, 2036, 2092 and 2093 of the penal law. A preliminary hearing was held on January 4, 1967, and as appears below I cannot afford to purchase minutes of the hearing nor other material which my attorney advises me is necessary to the defense of my case.

2. I am thirty-three years of age, separated from my husband and have four dependents.

3. I am unemployed. I receive support from my husband in the amount of $120.- per month. My four children receive assistance from the Aid to Dependent Children's Program. I have no other spurce of income.

4. I have no savings, checking account, stocks or bonds whatsoever. Nor do I own an automobile or any real property.

5. The only personal property I own is used clothin g of the value of approximately $200.- and used furniture of the value of approximately $300.-

6. I have asked Stephen M. Nagler to represent me in this case and he has consented to do so without fee. Furthermore I have not paid counsel or any other fees at any stage of these proceedings because Stephen M. Nagler has donated his services without compensation whatsoever.

7. I do not have sufficient funds to pay the cost of transcription of the minutes of hearing, to retain counsel, or to pay any of the other costs, fees or expenses necessary to the defense of this case.

8. On information and belief, all my co-defendants are welfare rec recipients and none of them can afford the costs of minutes of the case or any other legal fees.

9. I am not now incarcerated, and I am innocent of the charges against me.

10. I have been assisted in the preparation of this affidavit by Stephen M. Nagler, Esq.

11. No previous application for the relief sought herein has been made to this or any other court.

WHEREFORE, I respectfully request that the minutes of hearing and all subsequent proceedings be provided to me at the expense of the State, and that I be allowed to proceed as a poor person.

Mandel Bugett

Sworn to before me this

day of 1967

Adjourned to 11/21

Lower East Side

Anna Robinson
Lilie Robinson
Willie May Ryles
} Harold Rothwax

Warrant stayed
I.F. —

VIRGINIA LEONARD - LEONARD SANDLER
INOCENCIA FELICIANO " "
LESLEY FREEMAN " "
DORIS SOTO
ESTER McDUFFIE

624-3195
625-7205 N.A. DZELLA DAVIS ✓
~~DORIS SOTO~~ - MARVIN M. KARPATKIN

2920 Mermaid Ave
GENE WILSON
~~336 Vermont Ave~~
~~Brooklyn~~ 2
MAUDIE BUGGETT ✓ - 628 Sutter Avenue
~~MAMIE KERSE~~ -

486 E 140th St Bronx
& CORNELIA McCULLUM — C. R. — Tomorrow
~~388~~ 388-9088 ELLEN MURPHY ✓ - 1729 Lincoln Place Brooklyn
ROBERT HYLAND ✓
~~ESTER McAFEE~~
~~787-2920~~ JENNETTE WASHINGTON ✓ - 787-2928 ~~866-6246~~ FRANCES ~~DOTY~~ —
X JOHN SANDMAN

Will send numbers + addresses in

962-9259

CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: Part II A

PEOPLE OF THE STATE OF NEW YORK

-against-

ELLEN MURPHY,

Defendant

ELLEN MURPHY, being duly sworn deposes and says;

1. I was arrested on September 14, 1966 and charged with violating sections 722,2036,2092 and 2093 of the penal law. A preliminary hearing was held on January 4, 1967, and as appears below I cannot afford to purchase minutes of the hearing nor other material which my attorney advises me is necessary to the defense of my case.

2. I am twenty-seven, separated from my husband and have one dependent.

3. I am unemployed. My physician has said I am not well enough to work.

4. I receive assistance from the Department of Welfare from the AD Fund. My child receives assistance from the Aid To Dependent Children's Program. I receive no assistance from my husband and have no other sources of income.

5. I have no saving or checking accounts, stocks or bonds whatsoever. Nor do I own an automobile or any real property.

6. The only personal property that I own is used clothing of the value of approximately $100.- and used furniture of the value of approximately $100.-

7. I have asked Stephen M. Nagler to represent me in this case and he has consented to do so without fee. Furthermore I have not paid counsel or any other fees at any stage of these proceedings because Stephen M. Nagler has donated his services without any compensation whatsoever.

8. I do not have sufficient funds to pay the cost of transcription of the minutes of hearing, to retain counsel, or to pay any of the other costs, fees or expenses necessary to the defense of this case.

9. On information and belief, all of my co-defendants are welfare recipient s and none of them can afford the cost of the minutes of the case or any other legal fees.

10. I am not now incarcerated, and I am innocent of the charges against me.

11. I ahve been assisted in the preparation of this affidavit by Stephen M. Nagler, Esq.

12. No previous application for the relief sought herein has been made to this or any other court.

WHEREFORE, I respectfully request that the minutes of hearing and all subsequent proceedings be provided to me at the expense of the State, and that I be allowed to proceed as a poor person.

_____

Ellen Murphy

Sworn to before me this

day of 1967

CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: Part II A

PEOPLE OF THE STATE OF NEW YORK

-against-

JEANETTE WASHINGTON
Defendant

JEANETTE WASHINGTON, being duly sworn deposes and sa
says:

1. I was arrested on September 14, 1966 and charged with violating sections 722, 2036, 2092 and 2093 of the penal law. A preliminary hearing was held on January 4, 1967, and as appears below I cannot afford to purchase minutes of the hearing nor other material which my attorney advises me is necessary to the defense of my case.

2. I am thirty-one years of age, unmarried and have six dependents.

3. I work for the Strykers Bay Community Action Project and receive one hundred dollars a week. My six children receive assistance from the Aid To Dependent Children's Program. I have no other source of income.

4. I have $170.- in a savings account. I have no checking account, stocks or bonds whatsoever. Nor do I own an automobile or any real property.

5. The only personal property I own is used clothing of the value approximately $200.- and used furniture of approximately $100.-

6. I have asked Stephen M. Nagler to represent me in this case and he has consented to do so without fee. Furthermore

7. I do not have sufficient funds to pay the cost of transcription of the minutes of the hearing, to retain counsel, or to pay any of the other costs, fees or expenses necessary to the defense of this case.

8. On information and belief, all of my co-defendants are welfare recipients and none of them can afford the cost of minutes of the case or any other legal fees.

9. I am not now incarcerated, and I am innocent of the charges against me.

10. I have been assisted in the preparation of this affidavit by Stephen M. Nagler, Esq.

11. No previous application for the relief sought herein has been made to this or any other court.

WHEREFORE, I respectfully request that the minutes of hearing and all subsequent proceedings be provided to me at the expense o of the State, and that I be allowed to proceed as a poor person.

_____

Jeanette Washington

Sworn to before me this

day of 1967

CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK:Part II A

PEOPLE OF THE STATE OF NEW YORK

-against-

ROBERT HYLAND,

Defendant

ROBERT HYLAND, being duly sworn deposes and says;

1. I was arrested on September 14, 1966 and charged with violating sections 722,2036,2092 and 2093 of the penal law. A preliminary hearing was held on January 4, 1967, and as appears below I cannot afford to purchase minutes of the hearing nor other material which my attorney advises me is necessary to the defense of my case.

2. I am thirty-six years of age, married, and have four dependents.

3. I am presently unemployed. I do restaurant work when available, but I have been unable to secure steady employment.

4. I receive assistance from the Department of Welfare from the Disability Program. My three children receive assistance from the Aid for Dependent Children's Program.

5. I have no other sources of income.

6. I have no savings whatsoever. I have no checking account, stocks or bonds.

7, I do not own an automobile.

8. I do not own any real property.

9. The only personal property which I own is used clothing of the value of approximately $250.00 and used furniture of the value of approximately $200.00

10. I have asked Stephen M. Nagler to represent me on this appeal and he has consented to do so without fee as he has

done up to this point. Furthermore I have not paid counsel or any other fees at any stage of these proceedings because because Stephen M. Nagler has donated his services without any compensation whatsoever.

11. I do not have sufficient funds to pay the cost of transcription of the minutes of hearing, to retain counsel, or to pay any of the other costs, fees or expenses necessary to the defense of this case.

12. I am innocent of the charges against me.

13. I am not now incarcerated.

14. I have been assisted in the preparation of this affidavit by Stephen M. Nagler, Esq.

15. No previous application for the relief sought herein has been made to this or any other court.

WHEREFORE, I respectfully request that the minutes of hearing and all subsequent proceedings be provided to me at the expense of the State, and that I be allowed to proceed as a poor person.

Robert Hyland

Robert Hyland

Sworn to before me this
18th day of January 1967

Carl Rachlin

CARL RACHLIN
Notary Public, State of New York
No. 24-3192200
Qualified in Kings County
Certs. filed with Kings & N.Y. Co. Clks.
Term Expires March 30, 1967

CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: Part IIA

PEOPLE OF THE STATE OF NEW YORK

-against-

CORNELIA McCULLUM
Defendant,

CORNELIA McCULLUM, being duly sworn deposes and says:

1. I was arrested on September 14, 1966 and charged with violating sections 722, 2036, 2092 and 2093 of the penal law A preliminary hearing was held on January 4, 1967, and as appears below I cannot afford to purchase minutes of the hearing nor other material which my attorney advises me is necessary to the defense of my case.

2. I am thirty-three years of age, married and have four dependents.

3. I am unemployed and receive no support from my husband.

4. I receive assistance from the Department of Welfare. My four children receive assistance from the Aid to Dependent Children's Program. I have no other source of income.

5. I have no savings, checking account, stocks or bonds whatsoever. Nor do I own an automobile or any real property.

6. The only personal property I own is used clothing of the value of approximately $200.- and used furniture of the value of approximately $150.--.

7. II have asked Stephen M. Nagler to represent me in this case and he has consented to do so without fee. Furthermore I

have not paid counsel or any other fees at any stage of these proceedings because Stephen M. Nagler has donated his services without any compansation whatsoever.

8. I do not have sufficient funds to pay the cost of transcription of the minutes of hearing, to retain counsel, or to pay any of the other costs, fees or expenses necessary to the defense of this case.

9. On information and belief, all of my co-defendants are welfare recipients and none of them can afford the cost of minutes of the case or any legal fees.

10. I am not now incarcerated, and I am innocent of the charges against me.

11. I have been assisted in the preparation of this affidavit by Stephen M. Nagler, Esq.

12. No previous application for the relief sought herein has been made to this or any other court.

WHEREFORE, I respectfully request that the minutes of hearing and all subsequent proceedings be provided to me at the expense of the State, and that I be allowed to proceed as a poor person.

Cornelius McCullum

Sworn to before me this

day of 1967

April 4, 1967

Hon. Joseph Stone, Esq.
Assistant District Attorney
New York County
155 Leonard Street
New York, New York 10013

Re:Doris Sottio, et al. (17 Defendants arrested at 250 Church St.)

Dear Mr. Stone:

Let me express my sincere appreciation for your understanding of the hardships of my clients and your consent to their non-appearance on their last court date. The carfare alone (not to mention baby-sitting) would have been an unbearable expense for these welfare Mothers.

As you must be aware, the case will be on again in Part IIB on April 11th. There are a number of facts which I should like to bring to your attention. The arrests arose out of a demonstration at the offices of the Department of Welfare centered on a winter-clothing allowance for children whose families are welfare recipient. Emotion ran high, and a disagreement with the Commissioner became a matter of resentment. Since that time the Citywide Coordinating Committee of Welfare Groups which conducted the demonstration has entered into a more normal course of dealing with the Department of Welfare and its Commissioner. With time, a respect for the difficulties faced by Commissioner Ginsberg has developed and, I believe, a reciprocal respect has arisen. In short, I consider it highly unlikely that a recurrence of the situation leading to the arrests could occur again in the forseeable future.

There are also particular facts of which I shall like to inform you. Virginia Leonard, the defendant with the heaviest charges

against her was in all likelihood unconscious from exhaustion at the time of arrest. That she would have committed an assault on anyone at this time is inconceivable. She is presently a student in a Nursing academy and wishes eventually to become a registered nurse. Her prospects of removing herself and her children from the welfare rolls are excellent, but a misdemeanor conviction could dim her chances. She has no previous criminal record.

John Sandman is a student at Fordham University. He too has no previous criminal record. For some reason which I am at a loss to explain, YO treatment was denied to Sandman on the mere statement "I Object" of an Assistant District Attorney in Part III. I should say, to be completely accurate, that a Pre-Pleading investigation was denied, and that the court never had the occasion to pass on his eligibility for "YO". Another Assistant DA has suggested that I discuss with you the possibility of having Sandman's case referred to the Youth Counsel Bureau.

Other defendants are now either employed or have excellent prospects of employment which a misdemeanor conviction might destroy.

I ask only, that in the remaining week you re-examine the circumstances and consult with the complainant with an eye toward securing a just, equitable and socially desirable result for all concerned.

Very truly yours,

Stephen M. Nagler
Associate Counsel

SMN:n
CC:Commissioner Mitchell I. Ginsberg

Form 250-100M-511106(66) 114

Criminal Court of the City of New York

Part 11, County of New York

STATE OF NEW YORK
COUNTY OF N.Y. } ss.:

Henry Shemin Commissioner

of No. Dept. of Labor City of N.Y., County of N.Y.,

City of New York, being duly sworn, deposes and says that on Oct. 17, 1966, at about 8:30P M.,

at 93 Worth St. in the County of N.Y. State of New York,

the defendant, Joseph Sperling and 21 others did commit the crime of:

2 036 ~~XXXXXXXXXXXX~~ Penal Law:
Unlawful intrusion on real property
1530 Penal Law: sub. 4.
under the following circumstances:

Deponent states that at the above mentiondd time and place, the defend ants did wilfully and unlawfully congregate at the above premises, without authority or permission, and did refuse to leave when ordered to do so.

Defendants did further render the commissioner insecure in his property thereat. Defendants did by their actions disrupt the orderly routine of business thereat.

Sworn to before me

Oct. 17, 1966, 19.....

.....

Judge, Criminal Court of the City of New York

Pending Leaves
(see R & P 14/26.0) Vacation .....Other Leave: .....

CRIMINAL COURT OF THE CITY OF NEW YORK

PART 3: COUNTY OF NEW YORK

- x

THE PEOPLE OF THE STATE OF NEW YORK : Docket 4478

-against- : Charge: Disorderly conduct and 2036

JOHN SANDMAN, :

Defendant. :

- x

100 Centre Street
New York, New York
October 3, 1966

Before:

HON. REUBEN LEVY
Presiding

Appearances:

GINO GALLINA, ESQ.
Assistant District Attorney
For the People

STEPHEN M. NAGLER, ESQ.
150 Nassau Street
New York, New York
For the Defendant

Neil Foglia
Bridge Officer

Natalie Alston
Official Court Reporter

BRIDGE OFFICER: Calendar 11, docket 4478, John Sandman, charged with disorderly conduct; also charged with 2036. Sandman, step up. Represented by Carl Rachlin, 150 Nassau Street. Is that your lawyer?

MR. SANDMAN: Yes, sir. Presently, I think he is downstairs with a co-defendant.

THE COURT: Do you expect him up here late?

MR. SANDMAN: I think so.

THE COURT: Recall for counsel. Turn around please. Recall for cousel.

BRIDGE OFFICER: Have a seat.

* * * * *

BRIDGE OFFICER: Calendar 11, docket Y4487, John Sandman, charged with 2036, also charged with disorderly conduct. Represented by --

MR. NAGLER: Stephen M. Nagler, 150 Nassau Street, New York, New York. Your Honor, on this we request a pre-pleading, youthful offender eligibility investigation.

THE COURT: Is this on our calendar?

MR. NAGLER: Number 11, your Honor. I apologize for not being here at the first call. There are 16 co-defendants in 1B. Mr. Shelkowitz, for the

Welfare Department, both officer and myself, were in Part 1B. The others are not youthful offenders, your Honor.

MR. GALLINA: Objection.

THE COURT: You object to the YO on this?

MR. GALLINA: Yes.

THE COURT: Denied.

MR. NAGLER: If I may, your Honor. This young man is a student at Fordham University. He was arrested in the course of the demonstration at the Welfare Department.

THE COURT: What was he doing?

MR. NAGLER: Participating with a number of others, involving a sit-down.

THE COURT: Why? Does he have a conscious?

MR. NAGLER: I think it was a conscious that motivated him by disobeying.

THE COURT: There is also a matter of conscious in observing the law.

MR. NAGLER: I appreciate that, your Honor, and as an attorney certainly. I would say that there is a matter of protesting for what one feels is right. The matter of one's protest may be open to criticism.

THE COURT: To me that's very important. I don't see law breaking as a matter of protest. In this country we certainly have other procedures. If the district attorney feels he is not entitled to youthful offender treatment proceedings, I am not going to step in on the defendant's behalf. I don't approve of these kinds of demonstrations. I don't think that the demonstrators have any consideration for other people's feelings. We feel that what they consider conscious, as you put it, is sufficient reason for riding roughshod over everything else and everybody else.

MR. NAGLER: I with to point out that if, in fact, the law was broken in the sense which I think will probably be subject for trial, the purpose for this young man engaging in these activities was not the purpose of breaking the law but the purpose of indicating to the community by some sort of overt act that the wrongful nature of certain practices against which he and others protest.

THE COURT: He is to have a trial of course; nobody says he is guilty. The question is whether he is to be rewarded at this stage for his activity, and inasmuch as I, as Judge, disapprove of that activity,

it is my function to express my disapproval. I don't suppose you can take exception to it, you have done your best, and if the district attorney feels the way he does, I certainly won't remove any barrier that he has interposed. Disapproved for youthful offender treatment. What date for trial?

MR. SHELKOWITZ: November 21st is the date for the other trials, Part 1B. That's where the others are.

THE COURT: November 21st. Bail is continued on the misdemeanor. Parole is continued on the offense, and that goes back to 1B for trial. I am just advised that it has to stay here because he is a youth. Which is it, is it 1B?

MR. SHELKOWITZ: Well let's put it in this part, too.

THE COURT: Come back here to Part 3 for trial November 21st. Next case.

MR. NAGLER: Thank you, your Honor.

* * * * *

The above is certified to be an accurate transcript of the minutes in this case.

Natalie Alston

Natalie Alston
Official Court Reporter

10/22/66

INSTRUCTIONS FOR DEMONSTRATORS

1. Clothing should be simple but neat to make a good appearance. Comfortable shoes with flat or low heels should be worn. PLEASE DO NOT OVERDRESS!
2. Groups from each area should remain together on the line to be in touch with your picket captains.
3. Demonstrators must obey their picket captains at all times.
4. The line must be kept orderly and well spaced. DO NOT TALK ON THE LINE TO OTHER PICKETERS.
5. Keep the line moving.
6. Ignore any passers-by who try to engage you in conversation. Leaflets are being distributed to explain why we are here.
7. Ignore anyone who tries to heckle or provoke you. Your calmness will be more effective than any argument.
8. Do not eat on the line.
9. Keep your children with you at all times if you bring them. Do not allow them to play tag, etc. with other children.
10. No one but our official spokesman should speak to the press.

CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: PART II - B

PEOPLE OF THE STATE OF NEW YORK,

-against -

DORIS SOTO, et al,
Defendants.

DEFENDANT'S TRIAL MEMORANDUM OF LAW

Carl Rachlin,
Harold Rothwax,
Leonard Sandler,
Attorneys for Defendants,

Stephen M. Nagler
of Counsel.

CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: PART II-B

---X

THE PEOPLE OF THE STATE OF NEW YORK

Docket Nos.

-against-

DORIS SOTHO, et al,

Defendants.

---X

DEFENDANTS' TRIAL MEMORANDUM OF LAW

SUMMARY OF POINTS PRESENTED

POINT I. SECTION 722 (2) and (4) DO NOT APPLY UNLESS A BREACH OF THE PEACE I. E., VIOLENCE OR THE THREAT OF VIOLENCE OCCURS. A MERE INCONVENIENCING IS NOT ENOUGH.

POINT II. PEACEFUL, NON-VIOLENT CONDUCT TO EXPRESS VIEWS IS CONSTI_ TUTIONALLY PROTECTED "FREE SPEECH".

POINT III. BECAUSE §§722 IS A PENAL STATUTE A WRONGFUL INTENT IS A NECESSARY ELEMENT OF THE OFFENSE.

POINT IV. SECTION 2036 OF THE PENAL LAW APPLYING TO UNLAWFUL INTRUSION DOES NOT APPLY TO PERSONS WHO ENTERED LAWFULLY.

POINT V. UNLAWFULLY ASSEMBLY REQUIRES THAT PERSONS ASSEMBLE AND CONSPIRE OR THREATEN TO COMMIT THE CRIME OF RIOT OR OTHER VIOLENT BREACH OF THE PEACE.

POINT VI. PERSONS ASSEMBLING TO EXERCISE A CONSTITUTIONAL RIGHT WHO NEITHER ATTEMPT NOR THREATEN RIOT, NOR INJURY TO PERSON OR PROPERTY MAY NOT BE PROSECUTED FOR UNLAWFUL ASSEMBLY.

As To Charges of Violation of § 722:

POINT I

SECTION 722 (2) and (4) DO NOT APPLY UNLESS A BREACH OF THE PEACE I.E.,, VIOLENCE OR THE THREAT OF VIOLENCE OCCURS. A MERE INCONVENIENCING IS NOT ENOUGH.

The Court of Appeals of the State of New York has consistently held that in order for an act to be punishable under either subdivision 2 or subdivision 4 of Section 722 a "breach of the peace" must have occurred. PEOPLE v.CARCEL, 3 N.Y. 2d 327 (1957); PEOPLE v NIXON, 248 N.Y. 182 (1928); PEOPLE v. MOST, 171 N.Y. 423; PEOPLE v. HARVEY, 307 N.Y.588(1954).

In PEOPLE v. CARCEL, supra, the court said, as to what would constitute a breach of the peace:

> "The common law, definition of 'breach of peace' though not controlling, is helpful in ascertaining the nature of the acts proscribed by the statute. In PEOPLE v. MOST, 171 N.Y. 423, 429 breach of peace by any act of violence or by any act likely to produce violence, or which by causing consternation and alarm disturbs the peace and quiet of the community'...CANTWELL v. CONNECTICUT, 310 U.S. 296, 308.... guided by this definition the courts have indicated that something more than a mere inconveniencing of pedestrians is required to support a conviction under subdivision 2. "

PEOPLE v. NIXON, supra, involved one hundred and twenty convictions arising from labor demonstartions. People were parading 4 abreast on a 12 foot wide sidewalk, occupying one -half of it. The regular amount of traffic could barely get through and some pedestrians had to walk in the gutter. The court dismissed the § 722 (2) charge saying:

> "...As yet, bad manners have not been made punishable by imprisonment...(T)here is nothing to show that any other person could have regarded the defendants' conduct as a threat or as calculated to coerce or impede anyone. In the absence of evidence, we may not infer that the conduct of the defendants was intended as a threat or could be construed, or was an incentive to violence by others."

In PEOPLE v. NIXON, supra, and PEOPLE v. CARCEL the Court of Appeals carefully pointed out that:

> "Men and women constantly congregate or walk upon the streets in groups, quite oblivious to the fact that to some degree they are thereby causing inconvenience to others using the street."

Thus, although such persons certainly fall within the terms of §§ 722 (2), if read literally, such a reading would be incorrect. Only if a "breach of the peace" has been occasioned that is, "violence," or the"threat of violence" or "alarm" are the acts punishable under § 722.

Furthermore, it has frequently been held that for there to be a conviction under §§ 722 (4) there must have been:

> "...At least a breach of peace which caused a number of persons to congregate." PEOPLE v.KIERAN, 26 NYS. 2d 291 (1941);PEOPLE v. LaSISTER, 9 Misc 2d. 518 (1948).

What constitutes a "crowd" under the terms of §§ 722(4) has consistently been regarded as varying with the circumstances:

> "At best the word is indefinite. Difference in time and place may shape its meaning. A crowd at midnight might not be a crowd at noon. A crowd in a country schoolhouse might not be a crowd in Washington Square, but there is always implied in the word numbers with reference to the hour and location. "PEOPLE v. PHILLIPS, 245, N.Y. 401 (1927)

What would constitute a "crowd" sufficient to violate the statute in the circumstances of a case arising at a public office

building during business hours, in the middle of the day is obviously far more than under many other circumstances. In PEOPLE v.KIERAN, supra, a crowd on a public street which grew from 50 to 125 during the course of the arrest was held to be insufficient. The court said that a "multitude" or a "great number of persons" was required.

As the statute is written, the collection of a "crowd" is considered by the legislature to be one way in which a breach of peace might be occasioned. The obvious implication is that the crowd might become unruly and disturb the public order, That newsmen and reporters who act only as observers should not be counted is obvious. Even more apparently, peace officers should not be counted in determining the existence of a crowd. In fact, if sufficient police are present, the possibility of a breach of peace becomes considerably less and the applicability of § 722 (4) becomes even more unlikely. EDWARDS v. SOUTH CAROLINA, 372 U. S. 229 (1963); FIELDS v. SOUTH CAROLINA,375 U.S. 44(1964); COX v. LOUISIANA, 85 S C.t. 453(1965).

Furthermore, there is an exception within the terms of § 722 (4) for persons "lawfully addressing such a crowd". "Pure Speech" is certainly not the only means of addressing people. It has been throughly established that picketing, marching and patrolling are also means of expression. CANTWELL v. CONNECTICUT, supra; GARNER v. LOUISIANA, 368 U.S. 157; SCHNEIDER v. IRVINGTON, 308 U.S. 147, EDWARDS v. SOUTH CAROLINA, supra, They should therefore be regarded as outside the scope of the statute.

POINT II

PEACEFUL, NON_VIOLENT CONDUCT TO EXPRESS VIEWS IS CONSTITUTIONALLY PROTECTED "FREE SPEECH."

As was just stated in POINT I "Free Speech" as well as "Free Assembly" and the right to petition for a redress of grievances, encompass far more than "Pure Speech". Picketing and similiar forms of conduct when used for the valid purpose of expressing grievances, are also "Protected Speech." EDWARDS v. SOUTH CAROLINA, supra. Though the views expressed by the demonstrators may be unpopular as in the EDWARDS case, though they stir people to anger as in the CANTWELL case. they are protected by the First Amendment, to the U.S. Constitution as well as Article 1v§ 8 of the Constitution of the State of New York.

This is not to say that fighting words are protected FEINER v. NEW YORK, 340 U.S. 315. But peaceful, non-violent demonstrations provide no threat to the community against which a state may act. EDWARDS v. SOUTH CAROLINA, supra, FIELDS v. SOUTH CAROLINA, supra; COX v. LOUISIANA, SUPRA. It is clear from these cases that though the state may make reasonable traffic regulations, (COX v. NEW HAMPSHIRE, 312 U.S. 569) it could not under a general statute, which in its terms could

include even the most harmless conduct, prevent incidental obstructions arising from the "peaceful expression of unpopular views". In COX v. LOUISIANA, supra, the Supreme Court noted specifically that the sidewalk was obstructed, but said that the conduct of defendants nonetheless, fell within the doctrine of the EDWARDS case that such forms of expression are:

> "...protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience annoyance or unrest."

In addition, the courts on numerous occasions have held that property having certain public attributes is subject to the First and Fourteenth Amendments, notwithstanding its private form of ownership. MARSH v. ALABAMA, 326 U.S. 501 (1946); WATCHTOWER BIBLE & TRACT SOCIETY v. METROPOLITAN LIFE INSURANCE CO., 297, N.Y. 339 (1948). In MARSH v. ALABAMA,, THE COURT SAID:

> "Ownnership does not always mean absolute dominion. The more an owner, for his general advantage, opens up his property for use by the public in general the more do his rights become circumscribed by the statutory and constitutional right of those who use it."

POINT III

BECAUSE §722 IS A PENAL STATUTE A WRONGFUL INTENT IS A NECESSARY ELEMENT OF THE OFFENSE.

Picketing resting solely on malice or ill will may be unlawful, but that is not so where it is sought to attain some:

> "...purpose in the eye of the law thought sufficient to justify the harm that may be done to others". ANORA AMUSEMENT CORP. v. DOE, 12 N.Y.S. 2d 400 (1939) EXCHANGE BAKERY & RESTAURANT, INC. v. RIFKIN, 245 N.Y. at 263.

Thus if the purpose of the demonstrators is merely the peaceful expression of unpopular views" they lack the Mens Rea required under the statute. In overturning a conviction based on a Louisiana statute, The Supreme Court in COX v. LOUISIANA, supra, said:

> "In upholding appellant's conviction under the statute, the Louisiana Supreme Court thus construed the statute so as to apply to public assemblies which do not have as their specific purpose the obstruction of traffic."

In other words, persons who intend to express their views and not to foment a breach of the peace lack the wrongful intent required by the statute.

POINT IV

SECTION 2036 OF THE PENAL LAW APPLYING TO UNLAWFUL INTRUSION DOES NOT APPLY TO PERSONS WHO ENTERED LAWFULLY.

Under the modern cases it has been established that an unauthorized entry is necessary before section 2036 can be violated. (See People v Lawson, 44 Misc. 2d 578,254 N.Y.S. ad 300 (1964) aff'd 16 N.Y. ad 552, 260 N.Y.S. 2d 661,208 N.E. 2d 446(1965) and.People v Collins, 44 Misc. 2 d 430, 254 N.Y.S. 2d 182 (1964) aff'd 16 N.Y. 2d 554,260 N.Y.S.2d 662,208 N.E. 2d 467 (1965) A refusal to leave property that has been lawfully entered is definitely not a crime under § 2036.

Thus in Lawson,the Supreme Court, Appellate Term, First Department said per Judge Gold:"in this court's opinion,section 2036... in clear and unambiguous language, amkes criminal only an unauthorized entry upon real property. It does not purport to make criminal a refusal to leave property which had been lawfully entered". People v Lawson, 44 Misc. 2d 578 at 580,254 N.Y.S.2d 300 at 302(1964). The Supreme Court, Appellate Term, Second Department said the same thing in the Collins case:"While section 2036 of the Penal Law makes it a misdemeanor to intrude unlawfully on the land of another, it does not make it unlawful to remain, after being requested to leave, on premises theretofore lawfully lawfully entered". People v Collins,

44 Misc.2d 430 at 431, 254 N.Y.S. 2d 182 at 183 (1964).

On appeal the Court of Appeals affirmed both decisions on the basis of the Appellate Term opinion. Since "intrude" has been defined as "enter", a different interpretation, in the light of the statutory provisions language, might render the provision unconstitutional as applied because it would not give fair warning of the proscribed conduct. As the Supreme Court has said: "The constitutional requirement of definiteness is violated by a criminal statute that fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute. The underlying principle is that no man shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed ". Bouie v City of Columbia, 378 U.S. 347 at 351 (1964) (quoting from United States v Harriss, 347 U.S. 612 (1954).

It is significant that several states have statutes which explicitly state that either "intruding" or "remaining" on property against the will of the owner shall be a crime. e.g. Louisiana: LOMBARD v. LOUISIANA 373 U.S. 267 (1963); Florida: ROBINSON v. FLORIDA, 378, U.S. 153 (1964.)

The staff comments concerning the new "real estate crimes" (Art. 1 new New York Penal Law) fully recognize the gap in the present statutes:

> " When a person enters a building unlawfully but with no intent to commit a crime therein, or there is no evidence of such intent, the offense of burglary is not established. In cases where

> it is not probable that an intruder entered with the requisite intent, appropriate criminal sanctions should be available. The trespass provisions in the existing Penal Law Sections 1425 (9), 2036) however, are at best ill-defined and narrow in scope PEOPLE v. STEVENS, 109 N.Y. 159, 16 N.E. 53 (1888). The proposed penal law corrects these deficiencies by presenting in three degrees a new definition of the offense of 'criminal trespass' ..."

The many public attributes of a public building render it highly unlikely that § 2036 should be applicable at all. Certainly any member of the public may enter such a building and even loiter there.

Unless the building has a special purpose in which security is of importance (People v. Martinez, 43 Misc 2194, 250 N.Y.S. 2d 28 (1964)) People enter and leave without question as to their purpose and without permission or pretext of business.

POINT V

UNLAWFUL ASSEMBLY REQUIRES THAT PERSONS ASSEMBLE AND CONSPIRE OR THREATEN TO COMMIT THE CRIME OF RIOT OR OTHER VIOLENT BREACH OF THE PEACE

The statute applies only yo conduct of three or more persons. These persons must have a common intent and must act in concert. The conduct must threaten a breach of peace.

> "The offense can only be committed when there is a concert or combination of three or more persons who unite in an attempt or threat to do one or more of the things specified in the statute. A threat made by one or by two persons only in which no others participated would not be indictable under this statute, although made in an assembly of many persons. People v Most 128 N.Y., 114 (1891).

In this case, the defendant, an admitted anarchist, addressed a meeting of about 100 persons and urged a future revolution as well as calling for retribution against certain public officials in Illinois, responsible for the conviction and execution of anarchists in Chicago. Members by their applause and comments showed that they were in agreement with Most and one person openly called for a revolution "tonight".

The second major element is that the attempt or threat must be to do something specified in the statute. People v Most (supra). The intent of the statute is clearly to prevent the crime of riot as defined in section 2090. The court in Most described the common law crime as:

> "A disturbance of the peace by persons assembling together with an intention to do a thing which, if executed would

make them rioters, but neither executing it nor making a motion towards its execution. (128,N.Y. 108, 116).

Marks and Paperno, Criminal Law in Law (New York,1961)

distinguishes between riot and unlawful assembly thus:

"This distinction, in substance is in the circumstance that unlawful assembly is a step toward a riot, and if it ceases before it goes beyond that point, there is no riot." Section 392, p. 490.

The new New York Penal Law clarifies this by saying in section

245.05,

"A person is guilty of unlawful assembly when he assembles with two or more other persons for the purpose of engaging in conduct constituting the crime of riot, or when, being present at an assembly which either has or develops such a purpose, he remains there with intent to advance that purpose."

The wording of the statute and its location in the Penal Law clearly show that it is aimed at attempts or threat to riot. It immediately follows two sections defining and prescribing punishment for the crime of riot. The language used further emphasises the point. Thus, sub (1) "intent to commit any unlawful act by force", sub (2) "intent . . . to disturb the public peace", and sub (3) "attempt or threaten an act tending towards a breach of the peace, or an injury to person or property or any unlawful act". In this last subsection, the words "any unlawful act" should be held under the rule of ejusdem generis to mean any unlawful act that would breach the peace.

There are no reported cases in New York in which the statute has been used other than to prevent riotous conduct. Indeed, the application of the statute in other circumstances would almost certainly violate first amendment rights.

POINT VI

PERSONS ASSEMBLING TO EXERCISE A CONSTITUTIONAL RIGHT WHO NEITHER ATTEMPT NOR THREATEN RIOT, NOR INJURY TO PERSON OR PROPERTY MAY NOT BE PROSECUTED FOR UNLAWFUL ASSEMBLY

The mere fact that an assembly may arouse the passions of hostile onlookers does not make it unlawful. People v Edwards (supra). It is the duty of law enforcement officials to protect first amendment rights of free speech and petition from those persons who take the law into their own hands and prevent their lawful exercise. As long as the assembling group does not actually threaten or attempt to violently breach the peaceor engage in other conduct which amount to riot under 2090 or cause injury to person or property by force, then they may not be prosecuted under 2092.

To put it another way, § 2092 makes it a crime to manifest an intent to commit another crime. Where those acting in concert manifest another intent, the basic element of § 2092 is lacking. Further, the intended crime must be of such nature that a breach of peace is to be feared. The statute deals with situations in which a prior restraint on first amendment rights is justified. It must, therefore, be strictly limited.

Respectfully submitted,

Carl Rachlin,
Harold Rothwax,
Leonard Sandler,
Attorneys for Defendants.

Stephen M. Nagler
OF Counsel,

C 73— Judicial Subpoena; with Witness' Stipulation to remain subject to call. Blank Court. 9-63

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80 EXCHANGE PLACE AT BROADWAY. NEW YORK

CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: PART II- B

PEOPLE OF THE STATE OF NEW YORK,

Plaintiff

against

DORIS SOTO, ET AL,

Defendants

Index No.

Calendar No.

JUDICIAL SUBPOENA

The People of the State of New York

TO Virginia M. Bowes,
145-56 5th Avenue; Whitestone, New York

GREETING:

WE COMMAND YOU, *That all business and excuses being laid aside, you and each of you appear and attend before* Hon. Daniel S. Weiss, Judge of the Criminal Court,

on the 14th *day of* February *19* 67 *at* 9:30 *o'clock, in the* fore *noon, and at any recessed or adjourned date to give testimony in this action on the part of the* defendants.

Failure to comply with this subpoena is punishable as a contempt of Court and shall make you liable to the person on whose behalf this subpoena was issued for a penalty not to exceed fifty dollars and all damages sustained by reason of your failure to comply.

WITNESS, *Honorable* Daniel S. Weiss, *one of the* Judges *of said Court, at* 100 Centre Street, N.Y.,NY *the* 13th *day of* February *19* 67

Stephen M. Nagler

Stephen M. Nagler

Attorney(s) for Defendants

Office and Post Office Address
150 Nassau Street
New York, NY.10038

LAW OFFICES
DELSON & GORDON
120 EAST 41ST STREET
NEW YORK, N.Y. 10017

MURRAY HILL 6-8030

CABLE "DELEGOR"

October 19, 1966

Carl Rachlin, Esq.
150 Nassau Street
Room 1707
New York, New York

Dear Mr. Rachlin:

Please find enclosed the affidavit in support of the complaint against the 22 members of the Social Service Employees Union who were arrested on October 17th.

Very truly yours,

Ralph P. Katz

RPK:vap
Enclosure

MSS SEDFRE NJUHIGU, JAMES, CASE, 1966

Box 4
Folder 7

Historical Society of Wisconsin

Please Retain Original Order

Bluefield Daily Telegraph, T
THURSDAY Sept 8, 1966

Jury Deadlocks In Maiming Trial

A mistrial has been declared in the Mercer County Intermediate Court case of James Njuhigu, Bluefield State College foreign exchange student charged with maiming.

A 12 - man jury deliberated about four hours Wednesday before announcing a hopeless deadlock. Court spokesmen said the jury hung at eight for conviction and four for acquittal.

Judge Howard M. Jarrett, upon the jury's announcement at 4:05 p.m. Wednesday, declared a mistrial and re-set the case for Oct. 18, 1966.

Njuhigu, from Kenya, South Africa, was charged and indicted as a result of the pistol wounding of Gladys Gray at her apartment on the campus of Bluefield State College last May 8. The victim was shot one time in the right shoulder with a .38 calibre revolver, according to court testimony.

The jury started deliberations at 11:14 a.m. Wednesday, returned two times during the afternoon for a review of instructions and then reported the positive deadlock at 4:05 p.m.

The case opened Tuesday and the state concluded its evidence late Tuesday afternoon. Njuhigu did not take the stand and the defense, represented by Attorney Walter W. Burton, presented no evidence, court spokesmen said.

SEP 19 1965

Mercer County Jail
Princeton, W. Va.
14-9-66

Dear Mr. McKissick.

I am still under the trail of the same case that I was seeking an assistance from you. I never heard from Mr. Carl Rachlin, your General Counsel whom you promised me in your letter dated June 20, 1966.

I was returned back to jail for the fact that I could not pay the bond— One of the men jumped the bond for the influence of one who had accused me and made me be rearrested on peace Warrant.

I enclosed herewith do find the clip of the case which was held

on Sept 6 & 7-1966. I do feel very much neglected by the people of my race in this country. The only thing I am left with is Faith and Prayers that I may win this case.

I would again appeal for your assistance since it is not late to assist. Whatever assistance you may give will be again highly appreciated.

I remain

yours

James Njuhigu

CONGRESS OF RACIAL EQUALITY
CORE

38 PARK ROW
NEW YORK 38, NEW YORK
COrtlandt 7-6270

Floyd B. McKissick
national director

SEPTEMBER 26, 1966

CARL RACHLIN ESQ.
SCHOLARSHIP, EDUCATION AND DEFENSE FUND FOR
RACIAL EQUALITY
150 NASSAU STREET
NEW YORK, NEW YORK

RE: JAMES NJUHIGU CASE

DEAR CARL:

ENCLOSED IS A LETTER RECEIVED FROM MR. JAMES NJUHIGU.

YOU WILL REMEMBER THAT WE REFERRED THE ORIGINAL LETTER TO YOU ON JUNE 20TH AND REQUESTED THAT YOU INVESTIGATE THE MATTER IMMEDIATELY.

PLEASE FORWARD A COPY OF YOUR REPLY TO MR. NJUHIGU TO ME. YOUR IMMEDIATE ATTENTION TO THIS MATTER WOULD BE APPRECIATED.

SINCERELY,

FLOYD B. MCKISSICK
NATIONAL DIRECTOR

FBMcK/ILH

BURTON & BURKETT
ATTORNEYS AT LAW
LAW BUILDING
PRINCETON, W. VA. 24740

WALTER W. BURTON
BILLY E. BURKETT
DAVID BURTON

TELEPHONE 425-2143
AREA CODE 304

October 10, 1966.

Mr. Carl Rachlin, General Counsel,
Scholarship, Education and Defense
Fund for Racial Equality, Inc.,
150 Nassau Street,
New York, New York 10038.

Dear Mr. Rachlin:

This will acknowledge receipt of your letter of October 3, 1966. You were correctly advised that I was appointed by the Intermediate Court of Mercer County to defend Mr. Njuhigu as a result of a maiming indictment returned against him by that Court.

This case was originally tried Tuesday, September 6, and Wednesday, September 7, and resulted in a hung jury. It is again set for trial on Tuesday, October 18.

Bond has been set for some time in the amount of $1500.00, and no one has been able to secure that for Mr. Njuhigu. Prior to the first trial we attempted to have the Court permit Mr. Njuhigu to remain on his own recognizance without the posting of surety bond and were and have been unable to have this done. If your organization knows some bondsman that will advance surety in the amount of $1500.00, we, of course, will be happy to have Mr. Njuhigu out of jail.

Yours very truly,

BURTON & BURKETT,

Walter W. Burton.

WWB:em

November 16, 1966

Mr. Herbert Sturz
Director
Vera Institute
30 East 39th Street
New York, New York

Dear Herbert:

Some weeks ago I wrote to you about James Njuhigu. Have you had any luck in getting him released from jail? I would appreciate hearing.

Best regards,

Carl Rachlin
General Counsel

CR:ns

VERA INSTITUTE OF JUSTICE
30 EAST 39TH STREET
NEW YORK, N.Y. 10016
YU 6-5380

November 28, 1966

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Mr. Carl Rachlin, General Counsel
Scholarship, Education and Defense
Fund for Racial Equality, Inc.,
150 Nassau Street
New York, New York 10038

Dear Mr. Rachlin:

My sincere apologies for not writing to you sooner regarding the James Njuhigu case.

On October 26, Mr. Njuhigu was found not guilty of malicious wounding and unlawful wounding, two felony charges. He was, however, convicted of assault and battery, a misdemeanor, and received the maximum sentence of 12 months in the county jail.

According to his original counsel, Mr. Walter Burton, Mr. Njuhigu plans to appeal his conviction and will be represented by another court appointed attorney, Mr. William Sanders. Burton expects the application for appeal to be processed within four months.

During the course of the trial Burton's motion for release on recognizance was denied by the court and Mr. Njuhigu spent about three months in jail prior to his conviction.

I have written to Mr. Burton to find out whether that time will be credited toward the 12 month sentence. I will be in touch with you upon hearing from him.

Kind regards.

Sincerely,

Herbert Sturz

Herbert Sturz

HS:jb

December 2, 1966

Mr. Herbert Sturz
Vera Institute of Justice
30 East 39th Street
New York, New York 10016

Dear Herbert:

Thank you for your letter regarding James Njuhigu. Will he be released pending appeal? even if he should not be credited with time previously served? If there is anything we can do in helping to prepare the appeal, please let me know.

Sincerely,

Carl Rachlin
General Counsel

CR:ns

VERA INSTITUTE OF JUSTICE
30 EAST 39TH STREET
NEW YORK, N.Y. 10016
YU 6-5380

December 7, 1966

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WILLIAM P. SCHWEITZER
PATRICIA M. WALD
MRS. JAMES L. WATSON
ADAM YARMOLINSKY

Mr. Carl Rachlin, General Counsel
Scholarship, Education and Defense
Fund for Racial Equality, Inc.
150 Nassau Street
New York, New York 10038

Dear Mr. Rachlin:

I have just received a letter from Mr. Walter Burton, counsel for James Njuhigu. Mr. Njuhigu was in jail for a period of three months prior to his conviction and this time will be credited toward his sentence.

Sincerely,

Herbert Sturz

HS:jb

VERA INSTITUTE OF JUSTICE
30 EAST 39TH STREET
NEW YORK, N.Y. 10016
YU 6-5380

December 9, 1966

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WILLIAM P. SCHWEITZER
PATRICIA M. WALD
MRS. JAMES L. WATSON
ADAM YARMOLINSKY

Mr. Carl Rachlin, General Counsel
Scholarship, Education and Defense
Fund for Racial Equality, Inc.
150 Nassau Street
New York, New York

Dear Mr. Rachlin:

When I spoke with Walter Burton, Mr. Njuhigu's attorney, he did not know whether application would be made for release pending appeal in Mr. Njuhigu's case. As I understand, the appeal will be handled by another court appointed attorney, Mr. William Sanders. You might wish to contact Mr. Burton or Mr. Sanders for further information. Their addresses are:

Mr. Walter Burton
Burton & Burkett
Law Building
Princeton, West Virginia

(304) 425-2143

Mr. William Sanders
Law Building
Princeton, West Virginia

(304) 425-8126

Please let me know if we may be of any further assistance.

Sincerely,

Herbert Sturz

Herbert Sturz

HS:jb

December 12, 1966

William Sanders, Esq.
Law Building
Princeton, W. Virginia

RE: JAMES NJUHIGU

Dear Mr. Sanders:

I have been advised that you have been appointed court attorney for Mr. James Njuhigu. We are interested in Mr. Njuhigu and if we can be of any help to you by way of research or helping to prepare your brief on the appeal, please let me know.

Sincerely yours,

Carl Rachlin
General Counsel

CR:gtc

ccs: H. Sturz
F. McKissick

December 12, 1966

Mr. Floyd B. McKissick
National Director
Congress of Racial Equality
38 Park Row
New York 38, New York

RE: JAMES NJUHIGU

Dear Floyd:

You may recall that you asked me to help a young African named James Njuhigu.

Please be advised that with the cooperation of the VERA Foundation, we have made certain that he received legal help. The trial was had, he was acquitted of the main charges and convicted of the lesser charge and will be given credit for the time spent in jail prior to the trial.

I look forward to seeing you soon. With warm personal regards.

Sincerely yours,

Carl Rachlin
General Counsel

CR:gtc

GEORGE [illegible] VS. TROLIA, THOMAS, L. ET AL. DISTRICT OF COLUMBIA 1966
(ASSAULT and BATTERY; DEPRIVATION of RIGHTS)

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Historical Society Of Wisconsin

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELLEN NORMAN 2820 Myrtle Avenue, N. E. Washington, D. C. and MICHAEL NORMAN 2820 Myrtle Avenue, N. E. Washington, D. C. and CECIL LEWIS DAY, a minor, by Alice N. Scott, his guardian and next friend 1341 Park Road, N. W. Washington, D. C. Plaintiffs, v. THOMAS L. TROLIA, EDWARD E. SPIKER, WALTER G. ROURKE, DALE S. TIPPERY, PAUL J. BRENNAN, JOHN P. McCLEESE, GEORGE C. SCOTT, JAMES P. BENEDICT, EDWARD C. GEIGER, DONALD P. KRISS, CHARLES R. GANT, WILLIAM A. ROBERTS, JASON H. YAFFI, ROGER M. ROONEY, VICTOR C. JACOB, THOMAS A. BOWLES, and EDWIN J. RUFF Defendants.	Civil Action No. 2367-66

COMPLAINT
(Assault and Battery; Deprivation of Rights)

I.

The jurisdiction of this Court is invoked under D. C. Code §§ 11-521 and 1-102 and under the Civil Rights Act of 1871, 42 U. S. C. §§1983 and 1985.

II.

The plaintiffs are residents of the District of Columbia; the defendants are residents of and/or are found in the District of Columbia; and, the actions complained of herein all occurred within the District of Columbia. The amount in controversy exceeds $10,000, exclusive of interest and costs.

III.

On September 8, 1965, on a public street in the vicinity of 14th Street and Park Road, N. W., in the District of Columbia, the individual defendants TROLIA, SPIKER, ROURKE, BRENNAN, TIPPERY and others, acting under color of their authority as officers of the Metropolitan Police Department, and misusing such authority, and with full knowledge that their actions were wrongful, without justification and unlawful, did:

A. As to plaintiff MICHAEL NORMAN:

1. Strike and beat plaintiff MICHAEL NORMAN with billy clubs, black jacks and fists and did kick him about the face, head and body while he was helpless and offering no resistance.

2. Violently and with excessive force grab and throw plaintiff head first into a police paddy wagon while he was helpless and offering no resistance.

B. As to plaintiff CECIL LEWIS DAY:

1. Strike and beat plaintiff CECIL LEWIS DAY with billy clubs, black jacks and fists and did kick him about the face, head and body while he was helpless and offering no resistance.

2. Violently and with excessive force grab and throw plaintiff head first into a police paddy wagon while he was helpless and offering no resistance.

3. Inside a police paddy wagon, strike and beat plaintiff with billy clubs and fists about the head, arms and shoulders, while plaintiff was helpless and offering no resistance.

IV.

On September 8, 1965, at the Tenth Precinct Station House of the Metropolitan Police Department, the individual defendants, with full knowledge that their actions were wrongful, without provocation or justification and unlawful, did:

A. As to plaintiff MICHAEL NORMAN:

1. Strike and beat plaintiff MICHAEL NORMAN with their fists and kick him and did violently and repeatedly slam a heavy door against him, while he was helpless and offering no resistance.

2. For a period of hours, prevent and prohibit plaintiff from receiving necessary medical attention and did fail and refuse to transport plaintiff to a medical facility or otherwise to provide or permit plaintiff to obtain necessary medical attention for injuries from which plaintiff was then suffering.

B. As to plaintiff ELLEN NORMAN:

Punch plaintiff ELLEN NORMAN in her stomach and violently and forcibly push her into a wall, such action being taken by defendant TROLIA.

V.

Plaintiffs reallege and incorporate paragraphs III and IV above and further allege that as a direct and proximate result of the wrongful and unlawful conduct of the defendants, each of the plaintiffs suffered physical injuries, physical pain, loss of

STATEMENT OF THE NCACLU CONCERNING A DISORDER IN SOUTHEAST WASHINGTON ON AUGUST 15, 1966, AND THE ROLE PLAYED BY THE METROPOLITAN POLICE DEPARTMENT

[Presented to The Citizens Committee on the Anacostia Disturbance, September 8, 1966]

INTRODUCTION.

My name is William Ross. I am Chairman of the National Capital Area Civil Liberties Union, the local affiliate of the American Civil Liberties Union.

The subject of this Committee's investigation is of deep concern to the Civil Liberties Union. The episode in Southeast Washington on August 15, 1966, raises basic questions as to the state of law and order in the District of Columbia, and in particular the methods of the Metropolitan Police Department in handling potentially explosive occurrences.

It is generally recognized that an efficient police department needs and often enjoys the full support of the community which it serves. An inefficient police department is dangerous: it not only fails to provide protection against crime -- it can itself become the precipitating factor of disorder. A healthy police department is of great importance to the general enjoyment and protection of civil liberties in the District of Columbia.

The Civil Liberties Union undertook to investigate the Anacostia disturbance because of its obvious implications for future police-citizen relations and fair and effective police practices. Our investigators spent approximately three weeks in an effort to determine what happened in Southeast Washington on August 15. They interviewed or reviewed the statements and testimony of a total of nineteen witnesses. These included four police officers, three of whom testified under oath during the first courtroom proceeding arising out of the incident.

The purpose of our investigation was limited in scope. We have not attempted to reconcile the conflicting versions of the police and of citizens as to all the events that took place on August 15. We believe that it is the necessary function of this Committee to come to ultimate conclusions as to the facts. However, certain matters, which are basically not matters of dispute, bore an important part in the events that occurred and require comment.

RESPONSIBILITY OF THE POLICE AND OF THE COMMUNITY.

The basic conclusion which we have drawn from our investigation is that the responsibility for this episode and for the disorder connected with it must be shared

by certain participating members of the public and by the police department.

More specifically, we have concluded that the disorder was, in part, precipitated or aggravated by deficiencies in the procedures of the Metropolitan Police Department which were outlined in the July 16th report of the President's Commission on Crime in the District of Columbia.

The responsibilities of the community, of course, are deeply involved. This Committee must determine the extent to which the crowd was disorderly at the precinct house and at the intersection of Morris Road and Mt. View Place. You have heard testimony about the lack of recreational facilities in the Anacostia area and about other severe social and economic conditions which provide a breeding ground for hopelessness, for extreme discontent and possibly violence. While the Civil Liberties Union fully recognizes the need to deal with the severe conditions and desperate needs of the human beings in this section of the city, such conditions obviously do not justify the throwing of rocks and firecrackers at a policeman or a police station. Outbursts of disorder make us aware of the social and economic deprivations which lead to the disorder. However, we emphasize the

moral responsibility of all citizens, in expressing grievances and in militantly seeking a change in their conditions of life, not to resort to violence or to violation of the rights of others.

We would like to comment briefly on the conduct of the police during the episode. A more detailed description of the facts disclosed by our investigation appears as an Appendix to this statement.

(1) The Arrest in a Crowd.

The demonstrations at the 11th Precinct on August 15, 1966, and the ensuing disorder, were precipitated by several arrests which were made in the middle of a meeting of community organizers and teenagers at the Congress Heights Consumer Action Center. The first arrest, which led to the other arrests, was of a man suspected of seriously assaulting another man two days earlier.

Although no valid generalizations about the time and place of all arrests are possible, it appears unfortunate that these particular arrests were made in the midst of a sizeable group of persons conducting an orderly meeting. It seems probable that the effect of the arrest in the midst of the meeting, was both to intimidate and to antagonize the group holding

the meeting.

(2) The Appearance of Dogs.

Appearance of German shepherd dogs at the 11th Precinct while a demonstration was underway apparently caused a sharp deterioration in the manner of the crowd. Up to then, the demonstration, although loud and perhaps even roudy, was basically peaceful and nonviolent. The appearance of the dogs sparked the throwing of firecrackers, stones, and bottles.

Despite the fact that these dogs were in the control of private police agents, the Metropolitan police were responsible for permitting them to appear and remain on the scene. We do not know how long the dogs were permitted to remain. However, they were on the scene at some time between 9:30 to 10:00 p.m., and police officers who testified on August 24th and 25th in a court proceeding concerning the Anacostia incident stated that they saw dogs on the scene some time between 11:00 p.m. and 12:00 midnight. Therefore, the dogs either were permitted to remain on the scene for two hours or they were brought to the scene a second time. In addition, two of the officers testified that neither they nor, to their knowledge, any other police officer made any effort to question the

presence of the dogs or to have them removed. A third officer testified that Lt. Burchette had the dogs removed.

(3) Dispersing the Crowd.

It is generally recognized that when a point is reached where the police must disperse a crowd, dispersal should be carried out, to the extent possible, pursuant to a plan in which each policeman knows his particular job and the support he will receive from other police officers.

The testimony of police officers in a court proceeding on August 24th and 25th was that there was no such plan or specific instructions. Shortly before they were ordered to disperse the crowd, these particular officers spent about 30 minutes participating in an 11:00 or 11:30 p. m. roll call. The officers testified that they were ordered by Lt. Burchette to proceed in two police scout cars to the intersection of Morris Road and Mt. View Place. Their only orders were "to disperse the crowd". They were not told that another contingent of police officers was going to converge on the intersection from another direction. As far as these particular officers knew, seven or eight of them had the job of dispersing a crowd of

approximately 150 persons with no specific instructions.

(4) The Role of the Police Community Relations Unit.

Lt. Sullivan was on the scene during most of the events at the 11th Precinct and the Southeast Neighborhood House. The indications are that he was doing his utmost to establish communications between the officials of the 11th Precinct and the crowd. However, the testimony and statements of the police all refer to orders and decisions made by Lt. Ruff and Lt. Burchette. There has been no indication of any orders being given by the one police officer with the most experience in dealing with community relations.

D.C. CRIME COMMISSION REPORT

Each of the breakdowns or failures in police procedures which we have discussed above was, in effect, predicted in the July 16th report of the President's Commission on Crime in the District of Columbia. It is significant that the validity of the Crime Commission Report has been dramatically demonstrated exactly one month after its issuance.

1. Communication of Policy

Commissioner Tobriner and Chief of Police Layton have both stated that there is a policy against the making of arrests in crowds when avoidable and also against the use of dogs for crowd control. However, despite our efforts, we have been unable to find any written directives concerning these policies. The police officers who testified at the August 24th and 25th court proceeding could not recall any written directives. One of the officers testified that he knew of the policies because he had read about them in the newspapers.

The failure of the police department to communicate and enforce its policies regarding the use of dogs and the making of unnecessary arrests in crowds was predicted in the Commission's report. The Commission stated:

> "The Metropolitan Police Department suffers from deficient organizational structure which contributes to poor management. These weaknesses make it difficult for the Department leadership to exercise full control over the entire police operation; the chain of command is confused and supervision is erratic." (Page 5)
>
> * * * * *
>
> "The Metropolitan Police Department has been deficient through the years in developing procedures which enable the Chief of Police to communicate the Department's policy to the officer on the beat." (Page 8)

After a detailed discussion of the organizational, administrative, and supervisory deficiencies of the Police Department, the Crime Commission quotes from the report of the International Association of Chiefs of Police as follows: . . :

> "When these deficiencies are compounded with the lack of supervisory training among first line supervisors, there is little wonder that a climate exists for disciplinary infractions and a general laxity in supervision." (Page 10)

The Commission was most critical of the Police Department Canine Corps. It stated:

> "Indiscriminate use of the Canine Corps for crowd control may produce more serious conflict between citizens and the police. Although the Commission has been advised by the Chief of Police that it is his policy that man-dog teams are not to be used in crowd control, no specific directives to that effect have been promulgated."
>
> * * * * *
>
> " Canine Corps utilization is too important and sensitive a matter to be left to oral communications or general understandings." (Pages 54-55)

2. Training.

The Crime Commission Report emphasizes the general inadequacy of the training of police officers in the District of Columbia, particularly the lack of training in controlling and limiting juvenile disturbances, tension situations and crowds. The Report is critical of the fact that these essential facets of law enforcement are virtually ignored, while cadet training devotes:

74 hours to the Police Manual and General Orders;

46 hours to visiting D. C. facilities;

18 hours to public speaking and self expression;

4 hours on the deaf-mute manual alphabet; and

4 hours during which "class members donate blood on a voluntary basis". (Crime Commission Report, Pages 35, 69).

It appears improbable that police officers untrained in so difficult a task as crowd control can conduct themselves in a cool, efficient and restrained manner when tension is high and when disorder finally occurs. This may account for the fact that several professional staff workers of the Southeast Neighborhood House were assaulted and arrested by police officers during the melee. One of these workers has been acquitted after a trial on charges brought against him by the police.

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The Crime Commission Report states:

> "One important test of a good recruit-training program is the extent to which it equips the recruit to exercise

> his discretion wisely when confronted with actual enforcement problems. In the past, the Department has neglected this important ingredient of recruit training...." (Page 35)

3. Police-Community Relations.

The Anacostia disturbance provides a vivid example of the inability of the police and the public to communicate in a tense situation, despite repeated attempts. The Crime Commission Report is critical of the police community relations program of the Police Department. The Report calls policy statements heretofore made by Chief Layton "unsatisfactorily general and imprecise" (Page 74), and urges the Chief "to exercise firm control over the Department's police community relations program" and to display his determination to implement his policies in this field "by prompt directive and deed." (Page 76).

The deficiencies of the Department's Police Community Relations Unit, as set out in the Report, were evident during the Anacostia incidents. We endorse the Crime Commission's recommendations that the unit be assigned greater authority in relationship to the precincts.

CONCLUSION

The Crime Commission concludes its report by stating:

> "The Commission believes that the police department of the Nation's Capital should be a model of excellence. We have concluded, however, that our department trails behind the country's leading police departments in major phases of its operations." (Page 82)

This finding, following as it does an intensive investigation by the President's Commission and by the top professional police organization -- the International Association of Chiefs of Police -- has grave implications for civil liberties in the Nation's Capital. Despite President Johnson's endorsement of the Commission's Report and recommendations, and his request that the City Government institute these recommended changes, there has been no discernible change in the structure or operations of the Metropolitan Police Department in the almost two months that have lapsed since the issuance of the Crime Commission's Report.

We believe this Committee's investigation will show that a number of the deficiencies of the police department emphasized in the Crime Commission Report were involved and were causative factors in the Anacostia incident of August 15. We urge, and we hope that this Committee will urge, that the Crime Commission's recommendations be carried out at once. There can be no excuse for delaying needed organizational changes which require no substantial additional funds. Prompt correction of these deficiencies is essential if we are to avoid disorders far worse than what happened in Anacostia on August 15th.

Thank you.

APPENDIX

SUMMARY OF THE INCIDENTS.

Omitting matters as to which there is a substantial conflict in relation, our investigation disclosed that the following events occurred or probably occurred on August 15:

(1) At about 7 to 7:30 p.m. members of the Metropolitan Police Department arrested William Foote and another man suspected of having committed serious assaults the preceding Saturday, August 13. The arrest was made on the front lawn of the Congress Heights Consumer Action Center, 4200 Wheeler Road, Southeast. At the time the arrest was made, Foote and the other man were attending a meeting of about twenty persons, which included teenagers who lived in the area, and staff workers and community organizers of the Southeast Neighborhood House, an anti-poverty agency funded by the United Planning Organization. Several persons questioned the arrest and one of them, a Southeast Neighborhood House staff worker accused of interfering with the arrest by holding Foote's arm, was also arrested.

(2) Picketing began at the 11th Precinct Station House at Nichols Avenue and Chicago Streets, Southeast at about 8:00 to 8:30 p.m. to protest the arrests at the meeting. The picketers, for the most part, were teenagers from the neighboring Congress Heights and Barry Farms public housing projects who were accompanied by staff workers of the Southeast Neighborhood House. It is believed that at this time the picketing was basically orderly and lawful.

(3) While the picketing was taking place outside the 11th Precinct, staff members of the Southeast Neighborhood House had arranged for legal representation of the arrested men by attorneys of the Neighborhood Legal Services, and were attempting to establish a line of communication between police and the demonstrators.

(4) From about 8:30 to 9:00 p.m., the picketing outside the 11th Precinct diminished and almost ended. About 9:30 p.m. the picketing resumed and greater numbers

of persons in the general area, having heard about the picketing, joined the demonstration. The various groups outside the 11th Precinct grew to approximately one hundred in number. Many of these, rather than marching in a picket line, were standing in clusters on the sidewalk around the 11th Precinct Station House and on the sidewalks across the street from the stationhouse. At this time, staff workers of the Southeast Neighborhood House were inside the Precinct continuing to discuss with police officials means of communicating with the groups of persons outside the stationhouse. Although there are indications of shouting and rowdiness, it is believed that the demonstration was still within the law at this time.

(5) Sometime between 9:45 and 10:15 p.m. a van, apparently owned by Watchmen's Services, Inc., a private police service in Brandywine, Maryland, pulled into the roadway near the rear of the 11th Precinct. Three men with German Shepherd dogs got out of the van. These men were dressed in the uniform of Watchmen's Services, Inc., a green

uniform with broad-brimmed Texas type hats. Two of them proceeded with their dogs towards Nichols Avenue. As they emerged from the roadway alongside the 11th Precinct, the dogs lurched at several Negro youths who were passing by on the sidewalk. The youths jumped, the men restrained the dogs, and the youths passed.

(6) It is believed that the tone and manner of the crowd deteriorated at this precise point. There were shouts at the dogs and the men holding them, and a firecracker was thrown at the dogs. The men with the dogs then rushed the dogs at the crowd on the Southwest corner of the intersection of Nichols Avenue and Chicago Street, Southeast, just in front of the 11th Precinct. The dogs were taken part way out into Chicago Street to sweep the crowd back across Chicago Street, away from the 11th Precinct, then back across Nichols Avenue towards a parking lot adjacent to a liquor store directly across Nichols Avenue from the 11th Precinct.

(7) As the dogs were let across Nichols Avenue toward the liquor store parking lot, it is reported that

one to three persons stood ground on the sidewalk in front of the parking lot, with uplifted hands holding stones or bricks. It is reported that as the dogs moved within a few feet of these persons, it became clear that the dogs or their controllers would be struck by the stones or bricks if the dogs proceeded further. The dogs were then taken back across Nichols Avenue toward the 11th Precinct. In the face of this apparent retreat, the crowd cheered, and a number of rocks and firecrackers were thrown at the dogs. The dogs were taken either into the Precinct or in the back of the Precinct, and with no police officers in sight in front of the Precinct, rocks, bottles, and firecrackers were thrown at the Precinct Building for several minutes. Our investigation did not determine whether there were just a few missiles thrown intermittently or whether there were a great number thrown.

(8) The staff workers of Southeast Neighborhood House, some of whom had been amongst the crowd during these

incidents, finally managed to persuade the crowd to return to the Southeast Neighborhood House, located one block away up Morris Road at the intersection of Morris Road and Mt. View Place, S. E. At the Southeast House, there were several attempts made by police officials to answer questions and grievances expressed by the group which was now approximately 100 to 150 in size. The crowd expressed dissatisfaction with the responses of police officials to their questions and grievances. The crowd streamed out of the Southeast House and proceeded back down toward the 11th Precinct by going down Morris Road and through an alleyway into the parking lot alongside the liquor store on Nichols Avenue.

(9) There are reports that the police attempted to disperse the crowd in the liquor store parking lot by rushing at groups in the crowd with a police patrol car. There are also reports that police and dogs rushed across Nichols Avenue towards the crowd, thus driving the crowd back through the parking lot, up Morris Road, and toward the Southeast House. Our investigators were unable to check the

police version to determine whether these facts are in dispute. We believe that it is important that this Committee attempt to ascertain exactly what happened during this period, in particular because of the reported use of dogs. Police witnesses have testified that dogs were still on the scene at this time, that is, sometime after 11:00 p.m.

(10) On one or two more occasions, the staff workers at Southeast House persuaded the bulk of the crowd to move back into the Southeast House to hear from police officials. But, in each instance, the crowd was unsatisfied and, once more, left the Southeast House. On the last such occasion, the group, now approximately 100 to 150 in size, sat down in the roadway in the intersection of Morris Road and Mt. View Place, Southeast, just in front of the Southeast Neighborhood House, and one block from the 11th Precinct.

(11) The facts are in dispute as to whether or not the crowd sitting in the intersection was, at this point, by and large orderly or disorderly. It is clear, however, that some firecrackers were thrown at passing traffic. Police

officers have testified that firecrackers and other missiles were also thrown down Morris Road towards the 11th Precinct. Other witnesses have stated that the crowd sitting in the road was generally orderly.

(12) The crowd sent a delegation to the Precinct in an effort to see Lt. Burchette, then in charge. Lt. Burchette was asked to come and address the crowd. Apparently discouraged by the failures of other officers to appease the crowd, and in the process of planning to disperse the crowd by forcible means if necessary, Lt. Burchette refused to address the crowd.

(13) Sometime between 11:30 p.m. and 12:00 midnight, the police converged on the crowd at the intersection of Morris Road and Mt. View Place from several directions. Several police scout cars proceeded in a southerly direction on Mt. View Place towards the Morris Road intersection, and a detachment of at least 25 to 30 police officers, dressed in riot helmets, proceeded in an easterly direction up Morris Road towards the same intersection. There were also reports that the police had converged on the same intersection from

the two remaining directions, that is, proceeding northward on Mt. View Place and proceeding westward down Morris Road. The sharpest dispute in the facts concerning the incidents of August 15 revolves around the actions of the police as they moved into the crowd at this intersection. The police officers who have testified say that they forewarned the crowd to disperse, and then used no more force than was necessary. All non-police witnesses to this incident interviewed by our investigators alleged that the police charged into the crowd without warning and with billy clubs swinging.

(14) One police officer and at least six, and perhaps more, citizens were injured. There were from twelve to fifteen arrests, most of them with charges of disorderly conduct, and a few with charges of assaulting police officers.

NATIONAL CAPITAL AREA CIVIL LIBERTIES UNION

An Affiliate of the American Civil Liberties Union

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September 9, 1966

Mr. Marvin Rich
Executive Director,
Scholarship, Education and Defense Fund
for Racial Equality
150 Nassau Street
New York City, New York

Dear Marvin:

We have just filed the enclosed complaint drafted by Mike Nussbaum in the football-alley case of such great fame.

I hope that you can continue to finance the litigation.

I have also enclosed a copy of a report which we, that is, the NCACLU, have just prepared on a similar kind of incident which happened just last month.

I believe that I advised you of Hank Schlosberg's success in getting a 10-2 vote for acquittal in the prosecution of Michael Norman, and of Mike Nussbaum's success in getting the Juvenile Court to dismiss the charges against Cesar Day without even a trial. (Unfortunately, Michael Norman was convicted of failure to move on and fined $25).

At this point I am worried about whether I can get attorneys to prosecute the enclosed civil suit. In general, civil suits against police officers do not seem to be considered commercial and are perhaps even frowned upon by some members of the Bar.

Nevertheless, I think we have a good suit here. I am afraid of the possibility that the United States Attorney may decide, in light of our having filed suit, to reprosecute Michael Norman. However, we really had no choice inasmuch as the one-year statute of limitations would have precluded suit if we had not filed by September 8. Besides, Hank Schlosberg is prepared to defend the case again, and I don't think the U. S. Attorney can beat him.

The retainer agreement signed by the plaintiffs in the enclosed civil suit specifies that the attorneys shall receive a fee of one-third of any recovery, but only after deduction of the expenses of the civil suit and the expenses of the criminal actions. No one really expects to get anything out of this and I had the forms executed only as a matter of form. However, if any money does come out of it, it is my notion that the first of the proceeds would go to repay the SEDF for all the money that it has put up in this litigation.

Having made that rather hollow gesture, I will now ask you for more money. I have spent $13 for the transcript of Michael Norman's preliminary hearing. In addition, I have just laid out $51 to pay the marshal's fees of $3 for serving each of 17 defendants (receipt enclosed). As to future expenses, I doubt that we will want to take any depositions, inasmuch as we already have the lengthy transcript for which you put up over $400. I would guess that we could run an additional $100 or $200 on miscellaneous petty expenses.

Are you still with us?

Best wishes,

Sincerely,

Ralph Temple

cc: Michael Nussbaum, Esq.
Hubert Schlosberg, Jr., Esq.
John Karr, Esq.

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I

The defendant in error's evidence does not prove its petition, and the evidence submitted did not support or follow the petition.

II

The District Court erred in rulings of law occurring at the trial, and plaintiffs in error duly excepted to such rulings in due time.

III

The findings of the District Court were not justified by defendant in error's petition, regardless of proof.

IV

There was no basis at common law or at equity for the award of an injunction, since the picketing was peaceful and not for any illegal purpose, and therefore protected by the First Amendment of the United States Constitution. Hughes v. Superior Court of California, 339 U.S. 460 (1950) is not applicable since the picketing therein was held by the United States Supreme Court to be "picketing to promote discrimination", while the picketing herein was plainly for the purpose of eliminating racial discrimination and achieving fair hiring and employment practices.

V

Even if such picketing herein sought preferential hiring of Negroes in order to redress past discriminatory practices,

so long as such picketing was peaceful, this was not an illegal purpose and such picketing was protected by the First Amendment. Consequently, the issuance of an injunction was a violation of plaintiffs' in error's constitutional rights.

VI

Peaceful picketing is protected by the First Amendment of the United States Constitution, regardless of its purposes.

VII

The defendants in error did not prove, nor was there any basis for the Court to find, any violation of Oklahoma Statutes, Title 6, Section 263, which require proof that the statements made were false and malicious and unprivileged. There was insufficient proof of each of these three requisite elements.

VIII

Title 6, Section 263 was misapplied, inasmuch as it was never intended to allow a limitation of free speech in a race relations controversy.

IX

Title 6, Section 263 is a penal statute and only authorizes a criminal prosecution. Its use as the basis for the granting of a permanent injunction constitutes a prior restraint on free speech, in violation of the First Amendment of the United States Constitution.

X

Title 6, Section 263 deprives plaintiffs in error of due process of law, in violation of the Fourteenth Amendment of the United States Constitution, in that the Statute is so vague and indefinite that there is no clearly ascertainable standard of guilt.

XI

Title 6, Section 263 is, on its face, an unconstitutional violation of the guarantee of peaceful picketing contained in the First Amendment of the United States Constitution.

XII

Title 6, Section 263 is, on its face, unconstitutional as a criminal ~~liability~~ libel statute within the meaning of the United States Supreme Court's decision in New York Times Company v. Sullivan, 84 S. Ct. 710 (1964).

H.W. Wright, Jr.
Attorney for Defendants

Marvin M. Karpatkin
Attorney for Defendants

RECEIVED
OCT 7 1964
KARPATKIN, GOLDSTEIN & KARPATKIN

October 3, 1964

Dear Marvin:

You left in your wake an impressed courtroom, attorneys, various individuals, including the recording secretary of Core, Tulsa Chapter, with favorable comments richocheting off the walls from the courthouse all over town.

Pardon this thrown-together letter but Jim Goodwin and I have been considering our plight and he has an answer that will solve the problem, namely Maynard Ungerman.

Mr. Ungerman is a skilled and competent Tulsa lawyer high in the ranks of Oklahoma politics. He is on one of President Johnson's committees inconnection with the Civil Rights Bill. He is one of the leading labor lawyers in Tulsa having the respect and high opinion of the members of the local and state Bar Association as well as the judiciary.

Jim called him at my request. Mr. Ungerman indicated willingness to accept employment with expenses only. He did show some concern about the leadership within the local organization, but we assured him the problem of leadership had been solved.

Mr Ungerman would like to know what you would expect him to do here. He would like to have a brief summary of ~~the fact and~~ law involved as well as the relative position of the parties involved in the litigation. His firm, consisting of about eight attorneys besides himself, represents one of the local banks and he is concerned about an involvement with conflict of interests.

We did not commit Core in this matter, nor did Mr. Ungerman commit himself. He is waiting for communication directly from you.

I hope I have not acted unwisely, but there is no doubt in my mind that Mr. Ungerman is the man you want so you take it from here. Jim and I will not discuss the matter with anyone lest ~~wix~~ we get hung kwith the rap. I'd like to know what happens.

Your local assistant,

Dickeson Tolin

Tulsa injunction - Kirpatrick has main file.

October 9, 1964

Mrs. Garn Gordon, C.S.R.
District Court
703 Court House
Tulsa, Oklahoma

Dear Mrs. Gordon,

Enclosed is CORE's check No. 2910 in the amount of $231.25 covering cost of the transcript you did for us recently.

Thank you for your many courtesies. I look forward to meeting you when I am in Tulsa.

Cordially,

Carl Rachlin
General Counsel

Enc./

CR:hdl

October 12, 1964
3914 East 54th St.
Tulsa, Oklahoma

RECEIVED
OCT 15 1964
[illegible]
Per

Mr. Marvin Karpatkin
660 Madison Avenue
New York 21, N. Y.

Dear Marvin:

Unfortunately Mr. Ungerman had a head-on collision shortly after I wrote you previously.

Today I talked with Mr. Irvin E. Ungerman, father of Maynard Ungerman, and he asked that you send correspondence requested by his son to him. He also reminded me that "if you let the rights slide in regard to the time element they might dismiss the entire appeal."

Mr. Archibald Hill of Oklahoma City has offered to be our attorney without charge until we can obtain another local attorney. Mr. Tony Ringold is going to attend a few meetings before he decides to represent us locally.

The Ungermans are the more desirable attorneys being pillars of the Jewish community, etc.

If I may be of any help in any way don't hesitate to ask, I have given up other pursuits for the present.

Sincerely,

Vicki Dickeson

Vicki Dickeson
Recording Secretary

KARPATKIN, OHRENSTEIN & KARPATKIN
COUNSELORS AT LAW

MARVIN MOSES KARPATKIN
MANFRED OHRENSTEIN
RHODA HENDRICK KARPATKIN

660 MADISON AVENUE
NEW YORK 21, N.Y.
TEMPLETON 2-9600
CABLE "KARPOLAW NEWYORK"

October 16, 1964

Herbert W. Wright, Esq.
104 S. 92nd East Avenue
Tulsa, Oklahoma

Re: North Side State Bank v. CORE

Dear Herb:

This will acknowledge receipt of your letters of October 7 and October 9, 1964. Insofar as concerns the letter of October 7, the order prepared by Mr. Swindell appears satisfactory, and I have signed it and return the original, retaining the other copy as you have suggested.

The notice of appeal you prepared likewise appears to be satisfactory. However, I have one comment. Under our New York practice, when we take an appeal, in order not to miss out on any possible applicable point, we add language such as "and defendants appeal from each and every part of such verdict, and judgment, and overruling of the motion for a new trial". If this would have no meaning under Oklahoma law, simply forget it. Of course, what I am concerned about is that the constitutional questions raised on the argument for a new trial should be preserved to the fullest extent possible.

Insofar as concerns the draft of your petition in error, I find points 1, 2 and 3 satisfactory, but I have redrawn the balance of the petition in accordance with the constitutional arguments presented at the motion for a new trial. I enclose, in an original and two copies, the points in the petition in error which you may affix to the first page and file. I left the certification of service for you.

Would you please send me a final copy in the form in which it is filed.

I arranged for the court reporter to be paid, and she may well have received her check already.

I enclose a copy of my letter to Miss Gordon making the request for a case made.

You asked for the transcript and the brief. Of course, we will do the brief here in New York, but I only have a single copy of the transcript. My understanding was that Miss Gordon would provide such additional copies as were necessary for the Oklahoma Supreme Court. Please let me know if I am mistaken.

Finally, let me thank you for all of your assistance. I do look forward to seeing you again, perhaps on a joint swing of Tulsa and Oklahoma City for the argument of this appeal.

Yours sincerely,

Marvin

Marvin M. Karpatkin

MMK:eb
Encls.

cc: Carl Rachlin

Tulsa

KARPATKIN, OHRENSTEIN & KARPATKIN
COUNSELORS AT LAW

MARVIN MOSES KARPATKIN
MANFRED OHRENSTEIN
RHODA HENDRICK KARPATKIN

660 MADISON AVENUE
NEW YORK 21, N. Y.
TEMPLETON 2-9600
CABLE "KARPOLAW NEWYORK"

October 16, 1964

Miss Garn Gordon
District Court
Judicial District No. 14
Tulsa, Oklahoma

Re: North Side State Bank v. CORE, et al

Dear Miss Gordon:

Thank you so much for the portion of the transcript and for your conveyance of Judge Johnson's kind words in your letter of October 5, 1964.

Mr. Rachlin has assured me that your recent bill was approved and payment directed as soon as it was received, and a check should be on its way to you imminently, if you have not already received it.

Mr. Wright has requested that I formally advise you that we are appealing on the basis of case made and that I make a direct request to you, and presumably assure you, that your fees will be paid for such additional work as must be done to prepare a case made. I do so request, and thank you in advance for your cooperation. Could you please give me an estimate in advance of what these additional fees would be.

I enjoyed very much meeting you, and I particularly appreciated the opportunity to appear in your court.

Yours sincerely,

Marv.

MMK:eb

Marvin M. Karpatkin

cc: Carl Rachlin, Esq.
Herbert H. Wright, Esq.

Tulsa

KARPATKIN, OHRENSTEIN & KARPATKIN
COUNSELORS AT LAW

MARVIN MOSES KARPATKIN
MANFRED OHRENSTEIN
RHODA HENDRICK KARPATKIN

660 MADISON AVENUE
NEW YORK 21, N. Y.
TEMPLETON 2-9600
CABLE "KARPOLAW NEWYORK"

October 30, 1964

H. W. Wright, Jr., Esq.
521 Beacon Building
Tulsa 3, Oklahoma

Re: North Side State Bank v. CORE, et al

Dear Herb:

I have signed and return to you herewith the original of the Petition in Error. I am holding the other copy for my files.

What is our time-table now ? I assume that Mr. Hall and you will do everything necessary to have the case made properly filed in the Oklahoma Supreme Court.

By when must the brief be filed ?

Thank you so much for your assistance.

Very truly yours,

Marvin Karpatkin.
Marvin Moses Karpatkin

MMK:abm
Enclosure
cc: Amos Hall, Esq.
Carl Rachlin, Esq.

File

KARPATKIN, OHRENSTEIN & KARPATKIN
COUNSELORS AT LAW

MARVIN MOSES KARPATKIN
MANFRED OHRENSTEIN
RHODA HENDRICK KARPATKIN

660 MADISON AVENUE
NEW YORK 21, N. Y.
TEMPLETON 2-9600
CABLE "KARPOLAW NEWYORK"

November 10, 1964

H. W. Wright, Jr., Esq.
521 Beacon Building
Tulsa 3, Oklahoma

Re: North Side State Bank v. CORE, et al

Dear Herb:

Thank you for your letter of November 2. I assume that the extension order applies only to the case made, and not to the brief, and that our 60 days for the brief does not begin to run until the case made is filed ? Is this correct ? Please advise.

Would you also please pay the enclosed $1.50 check to the deputy clerk, Mr. Mitchell, which is his bill for furnishing me a photostat which I needed.

Thanks for your assistance.

Yours sincerely,

Marvin Moses Karpatkin

MMK:abm
Enclosure
cc: Amos Hall, Esq.
Carl Rachlin, Esq.

COPY

November 30, 1964

Irving E. Ungerman, Esq.
Ungerman, Gabrel & Ungerman
Wright Building
Tulsa, Oklahoma

Dear Mr. Ungerman,

Marvin Karpatkin has advised me that you have been kind enough to volunteer to assist the Tulsa CORE Chapter in problems of a legal nature. May I express the gratitude of our organization to you for this offer. I know CORE in Tulsa will be in capable hands.

Please keep in mind that we have facilities for the preparation of legal memoranda and briefs and can be of assistance to you in such matters. Don't hesitate to let us know when you would like some assistance. In any event, of course, Marvin Karpatkin will continue his close association with the North Side State Bank v. CORE case. In our minds we are ready to take this case to the United States Supreme Court if it proves necessary.

I look forward to meeting you in the near future. For many years I have known of your reputation in civil liberties matters and I am anxious to get to know you personally.

Sincerely yours,

Carl Rachlin
General Counsel

cc: Marvin M. Karpatkin, Esq.
Vicki Dickeson, Tulsa CORE

bcc: Mr. Richard Haley) CORE Southern
Mr. Ike Reynolds) Regional Office

CR:hdl

LAW OFFICES
UNGERMAN, GRABEL, UNGERMAN & LEITER
SIXTH FLOOR - WRIGHT BUILDING
TULSA 3, OKLAHOMA

IRVINE E. UNGERMAN
MANUEL GRABEL
MAYNARD I. UNGERMAN
WILLIAM LEITER
THEODORE P. GIBSON
PERRY A. KROHN
BENCILE H. WILLIAMS
RALPH GRABEL
ROBERT H. TIPS

TELEPHONE
LUTHER 4-6437
LUTHER 4-6438
AREA CODE 918

December 9, 1964

DEC 11 1964

Mr. Carl Rachlin
General Counsel
Congress of Racial Equality
38 Park Row
New York 38, New York

Dear Sir:

The writer wishes to acknowledge receipt of your letter of November 30th relative to representing the Tulsa CORE Chapter in problems of a legal nature and wish to thank you for the same.

We have not heard as to how Mr. Karpatkin is getting along with his appeal to the Supreme Court involving the Northside State Bank case and are wondering whether or not he is going to want any assistance from us in connection with that case.

We would like to hear from you in this connection.

Sincerely yours,

Ungerman, Grabel, Ungerman & Leiter

By

IEU:gc
Air Mail

KARPATKIN, OHRENSTEIN & KARPATKIN
COUNSELORS AT LAW

MARVIN MOSES KARPATKIN
MANFRED OHRENSTEIN
RHODA HENDRICK KARPATKIN

660 MADISON AVENUE
NEW YORK 21, N. Y.
TEMPLETON 2-9600
CABLE "KARPOLAW NEWYORK"

December 10, 1964

Irving E. Ungerman, Esq.
Ungerman, Gabrel & Ungerman
Wright Building
Tulsa, Oklahoma

Dear Mr. Ungerman:

I was delighted to receive a copy of Carl Rachlin's letter to you of November 30, 1964. As you may know, I was in Tulsa on October 1 to argue the motion for a new trial in North Side State Bank v. CORE. I discussed with some of the CORE people, and specifically our good friend Vicki Dickeson of Tulsa CORE, some of the problems in obtaining voluntary legal services on the high professional basis we CORE lawyers like to think the organization receives from us. I share Carl's enthusiasm and I look forward to meeting you on the occasion of the argument of the North Side case in the Oklahoma Supreme Court, if not sooner.

I believe we may have a common friend, Howard Friedman, Esq., of Loeb & Loeb, in Los Angeles, who was my classmate in law school. He is from Oklahoma City, where his father was the editor of a well-known Anglo-Jewish newspaper, the name of which escapes me at the moment. His wife, the former Wilma Mann, however, is a Tulsa girl, and I understand the Friedmans and the Manns have family all over Oklahoma.

Yours sincerely,

Marvin M. Karpatkin

MMK:eb

cc: Carl Rachlin, Esq.

KARPATKIN, OHRENSTEIN & KARPATKIN
COUNSELORS AT LAW

MARVIN MOSES KARPATKIN
MANFRED OHRENSTEIN
RHODA HENDRICK KARPATKIN

660 MADISON AVENUE
NEW YORK 21, N. Y.
TEMPLETON 2-9600
CABLE "KARPOLAW NEWYORK"

July 30, 1965

H. W. Wright, Jr., Esq.
521 Beacon Building
Tulsa, Oklahoma

Re: North Side State Bank v. CORE

Dear Herb:

I have been trying to reach you on the telephone without success for over two weeks. From information which you had given me early this spring I had assumed that the case made was properly filed, and that we had a period of six months to prepare and submit the briefs, i.e. until some time in September or October. Not having heard from you I telephoned Arch Hill and he advised me that the appeal was dismissed some time in June for failure to properly perfect the appeal. He also told me that the court issued an opinion but I have not seen a copy. Herb, I know how busy you are and how difficult and trying this whole experience has been for you, but you simply must help us do what is necessary to revive this case. A great deal depends on it, not only in the State of Oklahoma, but in peaceful picketing situations throughout the country. In addition to the monies expended, a number of us have given considerable time to this case with the intention of having it argued in the Supreme Court of Oklahoma and then if necessary in the United States Supreme Court.

As difficult as it may be for you I am asking you to please not neglect this matter. Send me a copy of the opinion immediately, and please call Arch Hill in Oklahoma City. He has spoken to various clerks and others in the Supreme Court in an effort to find a means whereby the case can be restated.

I know that we can count on you.

Sincerely,

Marv-

Marvin M. Karpatkin

lm

cc: Archibald Hill, Esq.
Carl Rachlin, Esq.

KARPATKIN, OHRENSTEIN & KARPATKIN
COUNSELORS AT LAW

MARVIN MOSES KARPATKIN
MANFRED OHRENSTEIN
RHODA HENDRICK KARPATKIN

660 MADISON AVENUE
NEW YORK 21, N. Y.
TEMPLETON 2-9600
CABLE "KARPOLAW NEWYORK"

August 11, 1965

H. W. Wright, Jr., Esq.
521 Beacon Building
Tulsa, Oklahoma

Re: North Side State Bank v. CORE

Dear Herb:

You have not answered my letter of July 30 nor have you accepted any of the numerous telephone calls which I made both before and after.

I cannot over-emphasize the urgency of this matter and I must urge you, notwithstanding any professional embarrassment which you may have, to send me a copy of the opinion and communicate with me immediately.

Yours sincerely,

Marvin M. Karpatkin

MMK:lk

cc: Archibald Hill, Esq.
Carl Rachlin, Esq.

SEP 10 1965

KARPATKIN, OHRENSTEIN & KARPATKIN
COUNSELORS AT LAW

MARVIN MOSES KARPATKIN
MANFRED OHRENSTEIN
RHODA HENDRICK KARPATKIN

660 MADISON AVENUE
NEW YORK 21, N.Y.
TEMPLETON 2-9600
CABLE "KARPOLAW NEWYORK"

September 9, 1965

Hon. Archibald B. Hill, Jr.
House of Representatives
Oklahoma City, Oklahoma

Re: North Side State Bank v. CORE

Dear Arch:

Many thanks for your recent letter and the draft of the petition which you were kind enough to enclose, as well as the copy of the opinion of the Supreme Court of Oklahoma. It arrived just as I was leaving for a vacation, from which I have just returned.

I hope to get to it within the next week and you will be hearing from me further then.

Kindest regards.

Cordially,

Marvin M. Karpatkin

MMK:eb

cc: Carl Rachlin, Esq.

SEDFRE O'CONNOR, PEGGY J. vs. JOHNSON, PAUL B., JR., GOV. OF MISS., et al., 1965-1967
(REAPPORTIONMENT)

Box 41
Folder 17

Society of Wisconsin

Please Retain Original Order

[Marcuse to Rachlin, 1965 October 8]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI

Peggy J. Connor, Anne E. Taylor, Augusta Wheadon, Ralthus Hayes, Catherine Crowell, Henry J. Kirksey, Elijah Conwell, Jr., Alma Carnegie for themselves and others similarly situated, and THE MISSISSIPPI FREEDOM DEMOCRATIC PARTY

CIVIL NO. _____

Plaintiffs,

- against -

PAUL B. JOHNSON, Governor of Mississippi, JOE PATTERSON, Attorney-General of Mississippi, HEBER LADNER, the Secretary of State of Mississippi, WALTER SILLERS, the Speaker of the Mississippi House of Representatives, GEORGE YARBROUGH, the President Pro Tempore of the Mississippi Senate,

Defendants.

I. JURISDICTIONAL STATEMENT

1. This action arises under United States Code Title 42, Section 1983 and Section 1988, and under the Constitution of the United States, particularly Article IV, Section 4, the Fourteenth Article of Amendment thereto, and the Fifteenth Article of Amendment thereto. Jurisdiction is conferred on this Court by United States Code, Title 28, Section 1343, Title 28, Sections 2201 and 2202, Title 22, Sections 2281 et seq., and Title 42 Sections 1983 and 1988.

II. PARTIES

2. Plaintiffs Connor, Taylor, Wheadon, Crowell, Kirksey, Conwell,Jr. Carnegie and Hayes, are United States citizens, citizens of the State of Mississippi, Negro residents respectively of Forrest, Forrest, Lowndes, Lauderdale, Hinds, Bolivar, Holmes, and Holmes Counties, residents of the 1st, 4th, 7th, 8th, 10th, and 22nd Senatorial Districts and residents of the 1st, 2nd, 3rd,

4th and 5th Congressional Districts. Each of them is a registered and qualified voter of the said State of Mississippi, lawfully entitled to vote in all primary, general and special elections for members of the Legislature of the State of Mississippi, and for members of the House of Representatives of the United States from their Congressional District. Plaintiffs Connor, Taylor, Crowell, Carnegie and Hayes are United States citizens, citizens of the State of Mississippi, Negro residents of Forrest, Lauderdale, and Holmes Counties, residents of the 4th, 8th, and 22nd Senatorial Districts who have, prior to December 1, 1964, been unlawfully prevented from exercising their right to vote in primary, general and/or special elections for members of the Legislature of the State of Mississippi. The Mississippi Freedom Democratic Party is a voluntary unincorporated association of residents and citizens of the State of Mississippi interested in freely exercising their right to vote and to participate fully in the political life of that State, which brings this suit on its own behalf and on behalf of its members. Plaintiffs jointly and severally bring this action on their own behalf and on the behalf of all other citizens of the State of Mississippi who are similarly situated, such persons being so numerous as to make it impractical to bring them all before this Court.

3. The defendant Johnson is sued in his capacity as Governor of the State of Mississippi and a member of the State Board of Elections Commissioners; as such he is vested with certain authority in connection with elections of members to the Mississippi Legislature.

The defendant Patterson is sued in his capacity as Attorney-General of the State of Mississippi, and a member of the State Board of

Election Commissioners; as such he is vested with certain authority in connection with elections of members to the Mississippi Legislature.

The defendant Ladner is sued in her capacity as Secretary of State of Mississippi and a member of the State Board of Election Commissioners; as such she has certain authority in connection with elections of members to the Mississippi Legislature.

The defendant Sillers is sued in his capacity as Speaker of the Mississippi House of Representatives; he is the presiding officer of that body, and is here sued as a representative of all presently acting members of said House, such members constituting a class so numerous as to make it impractical to bring them all before this Court.

The defendant Yarbrough is sued in his capacity as President Pro Tempore of the Mississippi Senate, and he is the presiding officer of that body, and is here sued as the representative of all presently acting members of said Senate, such members constituting a class so numerous as to make it impractical to bring them all before this Court.

4. Common questions of law and fact are involved as to each plaintiff and each defendant named herein, and common relief is sought against each defendant named herein.

III. THE DILUTION OF THE RIGHT TO VOTE

5. The present apportionment scheme for the State Legislature and Congressional districts, from which the incumbent State Senators, State Representatives and United States Representatives were elected, establishes irrational, invidious, discriminatory and unequal districts which have in the past and

presently deprive plaintiffs and all others similarly situated of rights guaranteed them by the Constitution of the United States and the State of Mississippi.

a. As to the Mississippi House of Representatives, Issaquena County has a population of 3,576 and one representative, while Forrest County has a population of 52,722 and two representatives or a representative for each 26,361. Thus the vote cast by a person in Issaquena County is worth 7.4 times as much as a vote cast by a person in Forrest County. There is likewise a gross disparity in the value of votes cast for representatives by persons in other counties in the state. (All figures are compiled from the 1960 Census Report.)

b. A majority of members of the Mississippi House of Representatives is elected by as few as 878,551 out of a population of 2,163,422 or 40.3% of the population control a majority of seats of said body.

c. Each of the 82 representative districts in the State of Mississippi should contain 17,034 persons to be apportioned on a strict population basis. At present, 53 of said 82 districts deviate from this norm by more than 15%, Of the deviations, 24 exceed the norm by more than 15% while 29 fail to meet the norm by more than 15%.

d. As to the Senate, district 44 has a population per senator of 20,987 while district 1 has a population per senator of 187,045. Therefore, a vote cast in district 44 is worth 8.5 times as much as a vote cast in district 1. There is likewise a gross disparity in the value of votes cast for senators by persons in other counties in the state. Each vote in district 36

is worth 4.8 times as much as a vote in district 2.

e. A majority of votes in the Senate represents as few as 820,249 persons out of a total state population of 2,163,422 or 37.7% of the population of the state control a majority of votes in the State Senate.

f. Each of the 49 senatorial districts should have a population of 41,887 persons per senator to be apportioned on a strict population basis. At present 32 of the said 49 districts deviate from this norm by more than 15%. Of the deviations 8 exceed the norm by more than 15%, while 24 fail to meet the norm by more than 15%.

g. As to the Members of the United States House of Representatives, the five Congressional Districts have a population as follows:

First District:	364,962
Second District:	608,441
Third District:	460,100
Fourth District:	295,072
Fifth District:	449,565

Thus a vote cast in the 4th District is worth more than twice as much as a vote cast in the 2nd District.

h. Each of the Congressional District should contain 435,628 persons to be apportioned on a strict population basis. At present, 3 of the 5 districts deviate from this norm by more than 15%. Of the deviations, 1 exceeds the norm by more than 15%, while 2 fail to meet the norm by more than 15%.

IV. THE DENIAL OF THE RIGHT TO VOTE

6. Up to and including the date of the election of the present Legislature of the State of Mississippi, there has been a systematic denial of the right to vote to Negro citizens of the State of Mississippi who

constitute approximately 42% of the population of the State. Said denial of the right to vote has been effectuated by the following methods:

a. The passage and/or enforcement of legislation interfering with and improperly restricting the right to vote of Negroes, both openly and through the use of devices not appearing to be directed towards disfranchising Negro citizens but in fact having that purpose and effect;

b. Violence and intimidation by public officials, including many elected to office, consisting of assault on Negroes who have attempted to register and others who accompany them to register, and physical intimidation of those suspected of desiring to vote or aiding others exercising their right to vote;

c. Action by public officials condoning private violence, including refusals to protect Negroes and prevent assaults upon them and refusals to ascertain the facts and punish the wrongdoers, when such assaults have taken place;

d. Economic retaliation against Negroes who seek to register, accomplished with the aid of public officials, consisting of taking pictures of those who attempt to register; the printing of the names and addresses of those who wish to register and the requiring of Negroes to return to the registrar's office to determine whether he has passed the test and other devices; all aimed at endangering the personal economic position of any Negro attempting to exercise his right to vote.

e. Misuse of broad discretion by local officials involved in the administration of laws having to do with the right to vote, including the application of different and more stringent standards to Negro applicants

than to white, rejection of the applications of qualified Negroes, rejections of Negroes who have equal or superior qualifications than whites who were accepted;

f. Delays, obstruction, technical obstacles, and refusal of routine administrative assistance by voter registrars to Negroes, including subjecting Negro applicants for registration to procedures different from those applied to white applicants, refusals to permit Negroes to apply, unreasonable delays, denying Negroes assistance but furnishing assistance and answers to whites, falsely advising Negroes that they failed the test, and refusals by registrars to see and process Negro applicants.

g. Each of such methods has likewise been used to prevent and obstruct the right of Negroes to run for office or be nominated or be a candidate in both primary and general elections.

7. As a result of such denials no Negro was elected to or now sits as a member of the Mississippi legislature or the Congress of the United States from Mississippi.

V. CAUSES OF ACTION

8. The facts herein alleged constitute a denial to the plaintiffs of the equal protection of the laws as guaranteed to them by the Fourteenth Amendment to the United States Constitution.

9. The facts herein alleged constitute a violation of the right to vote of the plaintiffs under the Fifteenth Amendment to the United States Constitution.

10. The facts herein alleged constitute a denial to the plaintiffs

of their right to a republican form of government, in violation of Article 1, Section 4 of the United States Constitution.

11. The facts herein alleged constitute a violation of the Constitution and statute and common laws of the State of Mississippi regarding the conduct of elections and matters ancillary thereto.

12. Plaintiffs and all others similarly situated are suffering irreparable injury to their aforesaid rights by reason of said facts. They have no plain, adequate or complete remedy to redress these wrongs other than by this suit for declaratory judgment and injunctive relief. Any other remedy would be attended by such uncertainties and delays as to deny substantive relief, and would cause further irreparable injury, damage, expense, and inconvenience to plaintiffs and all others similarly situated.

VI. BASIS FOR THE SPECIFIC RELIEF REQUESTED

13. Plaintiffs and all others similarly situated have no adequate political remedy for the wrongs resulting from the denial to them of the right to vote because the Mississippi Legislature as presently constituted is inherently incapable of securing the constitutional rights of said plaintiffs for the reasons that:

a. Negro citizens have been and are systematically excluded from participation in the election of the present Legislature as well as of past Legislatures in violation of the Fifteenth Amendment to the Federal Constitution.

b. The Mississippi Legislature has consistently, systematically and purposefully discriminated against Negro citizens of Mississippi. Such

discrimination evidences the incapacity of this Legislature to protect and enforce the constitutional rights of the plaintiffs.

14. Plaintiffs and all others similarly situated have no adequate political remedy for the wrongs resulting from the dilution of their right to vote because the Mississippi Legislature as presently constituted is inherently incapable of preparing a valid reapportionment plan consistent with the United States Constitution for the reasons that:

a. The apportionment plan under which the Legislature was elected was adopted only three (3) years ago, and yet is on its face unconstitutional;

b. The present Legislature controls the process by which the Mississippi Constitution is amended. The history of past Legislatures in general and of this Legislature in particular demonstrates that a primary purpose and effect of its acts has been to continue the dominion of those groups presently in control of it at the expense of the plaintiffs and all others similarly situated. Not only the establishment of state legislative and Congressional districts of unequal size, but also the determination of the boundaries for such districts, may and in all likelihood will be utilized by the present Mississippi Legislature for this purpose.

15. Unless this Court grants the relief prayed for herein, the result will be the continued sitting of a legislature unconstitutionally elected in a derogation of the constitutional rights of the plaintiffs and all others similarly situated. Said Legislature would continue to sit until January of 1969 and exercise direct governmental power in said State. Plaintiffs and others similarly situated have been, are and will be denied fair representation in

the halls of their State Government for a period of over three (3) years duration. During this said period, legislative action and inaction will occur which will directly affect the most fundamental interests of the plaintiffs and others similarly situated. The unconstitutionally elected legislators are responsible for the educational needs of the plaintiffs and others similarly situated, as well as the health and welfare of the said plaintiffs. The Legislature is responsible for public safety, the administration of criminal justice and for the protection of the constitutional liberties of said plaintiffs. Said legislators will have responsibility and influence over Federal programs designed to meet pressing social and economic problems of many of the State's citizens, such as the Federal anti-poverty programs, aid to education, urban renewal programs, and public housing programs. Plaintiffs and all others similarly situated have a constitutional right to representation, which right has been and is presently denied, and the restoration of which cannot be permitted to await action by the present Legislature of the State of Mississippi or the expiration of its term.

VII. PRAYERS FOR RELIEF

16. WHEREFORE, plaintiffs, on behalf of themselves and all others similarly situated, pray that this Court:

a. Assume jurisdiction in this matter and convene a statutory three-judge court pursuant to Title 22, United States Code Sections 2281 et sec.

b. Declare plaintiffs' rights to the effect that the present Mississippi Legislature was elected and is sitting in violation of the Fourteenth Amendment to the Federal Constitution, the Fifteenth Amendment to the

Federal Constitution and Article IV, Section 4 thereof.

c. Declare plaintiffs' rights to the effect that the present scheme of apportionment of the Mississippi Legislature and of Congressional Districts in the State of Mississippi violates the aforesaid provisions of the United States Constitution; and that the sections of the Mississippi Constitution and statutes relating to such apportionment, or providing or permitting discrimination against any citizen of the State of Mississippi because of his race or color, now in effect or in effect for the elections conducted for the incumbent members of the Mississippi Legislature or the incumbent members of Congress from Mississippi, are unconstitutional as repugnant to the United States Constitution and therefore are null, void, frustrate and of no effect.

Further, plaintiffs, on behalf of themselves and all others similarly situated, pray this court to issue a temporary and permanent injunction to:

d. Enjoin defendants from carrying out each and any constitutional or legislative duty or right pertaining to the conduct of the legislative business of the State of Mississippi.

e. Enjoin the conduct of any primary, general or special election for the Mississippi State Legislature until such time as this Court finds that the plaintiffs possess the rights guaranteed them by the Constitution of the United States.

f. Require the defendants to take such action as may be appropriate to remedy the denial by them of the right to vote to the plaintiffs and others similarly situated.

g. Appoint a special master to prepare a plan of apportionment for the House of Representatives and the Senate of the State of Mississippi, and the Congressional Districts of the State of Mississippi.

h. Require the holding of a special election for the said House and Senate when the foregoing has been accomplished.

i. Further, the plaintiffs pray that this Court allow the plaintiffs their cost herein including reasonable attorney fees.

j. Further, plaintiffs pray that this Court retain jurisdiction to supervise and guarantee the proper performance of the foregoing, and to grant such other and further relief as to this Court seems just, equitable and proper.

Attornies for Plantiffs:

L. H. Rosenthal
221 North President St.
Jackson, Mississippi

Peter Marcuse
49 Leavenworth St.
Waterbury, Connecticut

Mississippi Reapportionment

WEISMAN & WEISMAN
ATTORNEYS AT LAW
49 LEAVENWORTH STREET
WATERBURY 2, CONNECTICUT

AREA CODE 203
754-2105

HERMAN J. WEISMAN
1909-1961

H. JOHN WEISMAN
FRED B. ROSNICK
PETER MARCUSE

NORMAN S. DRUBNER
ALAN H. HERTZMARK

October 21, 1965

Gentlemen:

Attached is the revised last page of the Mississippi Reapportionment Complaint. Please substitute it for your present last page.

Please note the addition of language to paragraph g.

Names of Counsel are, I believe, as they were on the original; I am not certain, since the original was typed in Jackson. William Kunstler's name was inadvertently omitted from the original and is being added now, and other Counsel may join subsequently.

I have spoken with Len Rosenthal, who tells me that, when he saw Judge Cox, the judge was not impressed by the day to day urgency of the matter, and refused to sign the show-cause order, but rather referred the file to Judge Tuttle for the prompt appointment of the three-judge court. Len believes that we can probably get an assignment in early November if the Court is promptly constituted. If I have not recieved word on Monday, October 25, 1965, that it has been constituted, I will see what needs to be done at that time for a prompt hearing.

I will keep you informed of all developments.

Very truly yours,

WEISMAN & WEISMAN

Peter Marcuse

Peter Marcuse

PM/bac
enc:

[enclosed, Marcuse to ?, 1965, Oct 27]

g. Appoint a special master to prepare a plan of apportionment for the House of Representatives and the Senate of the State of Mississippi, and the Congressional Districts of the State of Mississippi, in such manner as to take into account all factors relevant to the protection of the rights of the plaintiffs and other Negro residents and voters of the State of Mississippi.

h. Require the holding of a special election for the said House and Senate when the foregoing has been accomplished.

i. Further, the plaintiffs pray that this Court allow the plaintiffs their cost herein including reasonable attorney fees.

j. Further, plaintiffs pray that this Court retain jurisdiction to supervise and guarantee the proper performance of the foregoing, and to grant such other and further relief as to this Court seems just, equitable, and proper.

Attorneys for Plaintiffs:

Alvin J. Bronstein, Esquire
603 North Farrish Street
Jackson, Mississippi

Morton Stavis, Esquire
744 Broad Street
Newark, New Jersey

Attorneys for Plaintiffs:

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Peter Marcuse, Esquire
49 Leavenworth St.
Waterbury, Conn.

Carl Rachlin, Esquire
38 Park Row
New York, New York

Arthur Kinoy, Esquire
511 Fifth Avenue
New York, New York

Melvin L. Wulf, Esquire
156 Fifth Avenue
New York, New York

Benjamin Smith, Esquire
Whitney Building
New Orleans, Louisiana

SOUTHERN DISTRICT OF MISSISSIPPI
FILED
NOV 6 1965
Loryce E. Wharton, Clerk
By
Deputy

IN THE UNITED STATES DISTRICT COURT FOR THE

SOUTHERN DISTRICT OF MISSISSIPPI

JACKSON DIVISION

PEGGY J. CONNOR, ET AL,)
Plaintiffs,)
)
VS.) CIVIL NO. 3830
)
PAUL B. JOHNSON, ET AL,)
Defendants.)
)

M O T I O N

Defendants in the above-styled cause come, by their attorney, and respectfully move the Court for additional time within which to plead responsively, and in support of the Motion shows unto the Court the following, to-wit:

1. The cause presents matters of great public interest as well as serious jurisdictional and other legal issues that require extensive research, study and preparation so that all issues raised may be properly presented to aid the Court in reaching its decisions thereon according to justice and the right of the cause.

2. Counsel assigned to represent the defendants in this matter is presently engaged in other pressing legal matters that do not permit his devoting the time necessary to the proper preparation of the defense of this case and required by the very nature of the matter presented.

For the reasons stated above, defendants respectfully move the Court to enter its order granting to them forty-five (45) days additional time to make defense in this cause in any manner permitted by the Federal Rules of Civil Procedure.

Respectfully moved this the 6th day of November, 1965.

PAUL B. JOHNSON, ET AL

JOE T. PATTERSON, ATTORNEY GENERAL

BY: Martin R. McLendon

MARTIN R. McLENDON
Assistant Attorney General
P. O. Box 220
Jackson, Mississippi

CERTIFICATE OF SERVICE

I, MARTIN R. McLENDON, Assistant Attorney General, Attorney of Record for the defendants herein, certify that I have served a copy of the foregoing Motion upon the plaintiffs by mailing a copy thereof by U. S. Mail, postage prepaid, to each of the attorneys for the plaintiffs listed on the Complaint at the addresses shown thereon.

This the 6th day of November, 1965.

Martin R. McLendon

MARTIN R. McLENDON

SOUTHERN DISTRICT OF MISSISSIPPI
FILED
NOV 6 1965
Loryce E. Wharton, Clerk
By
Deputy

IN THE UNITED STATES DISTRICT COURT FOR THE

SOUTHERN DISTRICT OF MISSISSIPPI

JACKSON DIVISION

PEGGY J. CONNOR, ET AL,)
Plaintiffs,)
)
VS.) CIVIL NO. 3830
)
PAUL B. JOHNSON, ET AL,)
Defendants.)
_____)

O R D E R

For good cause shown on Motion, defendants are granted forty-five (45) additional days within which to make defense to this cause in any manner permitted by the Federal Rules of Civil Procedure.

Ordered This the 6th day of November, 1965.

s/ Harold Cox
U. S. DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE

SOUTHERN DISTRICT OF MISSISSIPPI

JACKSON DIVISION

PEGGY J. CONNOR, ET AL, Plaintiffs,	)	
vs.	)	CIVIL NO. 3830
PAUL B. JOHNSON, ET AL, Defendants.	)	

MOTION TO DISMISS

Defendants in the above-styled cause come, by their attorney, and respectfully move the Court to dismiss the Complaint for lack of jurisdiction over the person of the defendants, and in support of the Motion show unto the Court the following, to-wit:

(1) Plaintiffs' action, although nominally directed against the individual defendants as officers of the State, asks the Court to impose compulsion against the sovereign State of Mississippi; and the suit in substance is a suit against the Government over which the Court has no jurisdiction

in the absence of consent, which has not been given.

(2) Plaintiffs seek to have the Court declare that a wrong exists; and the relief sought by plaintiffs is that the Court enjoin the responsible state officers from meeting for the purpose of correcting the alleged wrong or conducting any other business of State Government.

For the reasons set forth above, and readily apparent from the face of the Complaint, defendants move that the Complaint be dismissed for lack of jurisdiction of the Court over the defendants to grant the relief sought by the plaintiffs.

Respectfully moved this the 17th day of December, A. D., 1965.

ALTERNATIVE PLEA IN ABATEMENT

Defendants respectfully move, alternatively and only in the event the foregoing Motion is not sustained, the Court to order the abatement of this action until such time as the plaintiffs amend their Complaint as follows, to-wit:

(1) By dropping from the Complaint parties defendant those named defendants over which the Court does not have jurisdiction in the capacity in which they are sued herein.

(2) By removing from the prayer of the Complaint each of the requests for specific relief the granting of which would effectively prohibit the State of Mississippi from correcting the alleged wrong which plaintiffs ask that the Court declare exists.

Respectfully moved this the 17th day of December, A. D., 1965.

PAUL B. JOHNSON, ET AL

JOE T. PATTERSON, ATTORNEY GENERAL

BY: Martin R. McLendon

MARTIN R. McLENDON
Assistant Attorney General
P. O. Box 220
Jackson, Mississippi

CERTIFICATE OF SERVICE

I, MARTIN R. McLENDON, Assistant Attorney General, Attorney of Record for the defendants herein, certify that I have served a copy of the foregoing upon the plaintiffs by mailing a copy thereof by U. S. Mail, postage prepaid, to each of the attorneys for the plaintiffs listed on the Complaint at the addresses shown thereon.

This the 17th day of December, A. D., 1965.

Martin R. McLendon
MARTIN R. McLENDON

IN THE UNITED STATES DISTRICT COURT FOR THE

SOUTHERN DISTRICT OF MISSISSIPPI

JACKSON DIVISION

PEGGY J. CONNOR, ET AL, Plaintiffs,	)	
vs.	)	CIVIL NO. 3830
PAUL B. JOHNSON, ET AL, Defendants.	)	

MOTION TO DROP PARTY

Defendants in the above-styled cause come, by their attorney, and respectfully move the Court to order the plaintiff, Mississippi Freedom Democratic Party, dismissed and dropped from this cause as a party plaintiff, and in support of the motion show unto the Court the following, to-wit:

(1) The unincorporated association does not have capacity to sue under the law of the State of Mississippi.

(2) The unincorporated association does not allege that the suit in its common name is for the purpose of enforcing for or against it a substansive right existing

under the Constitution or laws of the United States, but alleges that it ". . . brings this suit on its on behalf and on behalf of its members."

(3) The unincorporated association does not possess for itself the right to vote or be represented in the Congress or the Mississippi Legislature; and it cannot affirmatively assert personal constitutional rights of or for its members; which said rights may be asserted only by the individuals possessing such rights.

(4) Dropping the unincorporated association, which is neither a proper, necessary or indispensable party, will not materially effect the rights, if any, of the individual plaintiff to the relief sought.

For the above and foregoing reasons, which show that the unincorporated association is misjoined as a party-plaintiff, defendants respectfully move the Court to enter its order dismissing the Mississippi Freedom Democratic Party by dropping that unincorporated association from the cause as a party-plaintiff.

Respectfully moved this the 17th day of December, A. D., 1965.

PAUL B. JOHNSON, ET AL

JOE T. PATTERSON, ATTORNEY GENERAL

BY: Martin R. McLendon

MARTIN R. McLENDON
Assistant Attorney General
P. O. Box 220
Jackson, Mississippi

CERTIFICATE OF SERVICE

I, MARTIN R. McLENDON, Assistant Attorney General, Attorney of Record for the defendants herein, certify that I have served a copy of the foregoing Motion to Drop Party upon the plaintiffs by mailing a copy thereof by U. S. Mail, postage prepaid, to each of the attorneys for the plaintiffs listed on the Complaint at the addresses shown thereon.

This the 17th day of December, A. D., 1965.

Martin R. McLendon

MARTIN R. McLENDON

IN THE UNITED STATES DISTRICT COURT FOR THE

SOUTHERN DISTRICT OF MISSISSIPPI

JACKSON DIVISION

PEGGY J. CONNOR, ET AL, Plaintiff,	)	
vs.	)	CIVIL NO. 3830
PAUL B. JOHNSON, ET AL, Defendant.	)	
_____	)	

MOTION TO STRIKE

Defendants in the above-styled cause come, by their attorney, and respectfully move the Court to strike certain portions of the Complaint, and in support of the Motion show unto the Court the following, to-wit:

(1) The allegation on page 2 of the Complaint that "Plaintiffs Connor, Taylor, Crowell, Carneigie and Hayes are United States citizens, citizens of the State of Mississippi, Negro residents of Forrest, Lauderdale, and Holmes Counties, residents of the 4th, 8th, and 22nd Senatorial Districts who have, prior to December 1, 1964, been unlawfully prevented from exercising their right to vote in primary, general and/or special elections for members of the Legislature of the State of Mississippi." is redundant, immaterial, directly in conflict

with the allegation immediately proceeding it and is prejudicial to these defendants.

(2) The entire Article IV, and each separate paragraph thereof, entitled "The Denial of the Right to Vote" is redundant, impertinent, scandalous and prejudicial to these defendants; the right to vote is firmly established and cannot be considered in this case because the plaintiffs allege that they are qualified to vote and all those they propose to represent as a class must of necessity be, also, qualified to vote or they would not fall within that class; and the question of voting rights is not a proper subject for consideration by a statutory Three-Judge Court.

(3) Striking from the Complaint the redundant, immaterial, impertinent and scandalous matter will not materially effect the right of the plaintiffs to prove their case for congressional redistricting and legislative reapportionment and to obtain the relief, if any, to which they are entitled.

WHEREFORE PREMISES CONSIDERED, Defendants respectfully move the Court to enter its order striking those allegations of the Complaint which are found by the Court to be redundant, immaterial, impertinent or scandalous and prejudicial to these defendants.

Respectfully moved this the 17th day of December, A. D., 1965.

ALTERNATIVE MOTION FOR MORE DEFINITE STATEMENT

Defendants respectfully move, alternatively and only in the event all of the foregoing motion is not sustained, the Court to order the plaintiffs to more definitely state the paragraphs of the Complaint which are not stricken to show unto these defendants the following concerning the allegations not stricken.

(1) The acts, if any, that are charged to these defendants concerning the alleged denial of certain plaintiffs the right to vote prior to December 1, 1964, stating specifically the acts charged, the date, time and place of the act, or acts, and persons present when the alleged acts occurred.

(2) A statement of the act, or acts, if any, of these defendants in attempting in any way to accomplish any of the general acts charged in Article IV, and each paragraph thereof, of the Complaint setting forth the date, time, place, persons present and what act, or acts, were allegedly done by these defendants for the purpose of accomplishing any of the acts charged.

WHEREFORE PREMISES CONSIDERED, Defendants respectfully move the Court, alternatively and only in the event the motion to strike is not sustained in its entirety, to order the plaintiffs to more definitely state those acts of alleged wrongful conduct charged against these defendants so that they may properly prepare to defend the charges.

Respectfully moved this the 17th day of December,

A. D., 1965.

PAUL B. JOHNSON, ET AL

JOE T. PATTERSON, ATTORNEY GENERAL

BY: Martin R. McLendon

MARTIN R. McLENDON
Assistant Attorney General
P. O. Box 220
Jackson, Mississippi

CERTIFICATE OF SERVICE

I, MARTIN R. McLENDON, Assistant Attorney General, Attorney of Record for the defendants herein, certify that I have served a copy of the foregoing upon the plaintiffs by mailing a copy thereof by U. S. Mail, postage prepaid, to each of the attorneys for the plaintiffs listed on the Complaint at the addresses shown thereon.

This the 17th day of December, A. D., 1965.

Martin R. McLendon

MARTIN R. McLENDON

Mrs Heffter

TO THE SUPREME COURT OF THE UNITED STATES

FROM

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI

PEGGY J. CONNOR, ANNE E. TAYLOR, AUGUSTA WHEADON, RALTHUS HAYES, CATHERINE CROWELL, HENRY J. KIRKSEY, ELIJAH CONWELL, JR., ALMA CARNEGIE for themselves and others similarly situated, and THE MISSISSIPPI FREEDOM DEMOCRATIC PARTY

Plaintiffs,

- against -

PAUL B. JOHNSON, Governor of Mississippi, JOE PATTERSON, Attorney-General of Mississippi, HEBER LADNER, the Secretary of State of Mississippi, WALTER SILLERS, the Speaker of the Mississippi House of Representatives, GEORGE YARBROUGH, the President Pro Tempore of the Mississippi Senate,

Defendants.

CIVIL NO. 3830

APPLICATION

THE PLAINTIFFS RESPECTFULLY REPRESENT:

1. On October 19, 1965 the Plaintiffs filed in the District Court for the Southern District of Mississippi, Jackson Division, a Complaint alledging a denial of the equal protection of the laws by reason of a dilution of the right to vote through malapportionment of the Senatorial and House Districts of the Legislature of the State of Mississippi and its Congressional Districts, and also by reason of a denial of the right to vote through racial discrimination in the election processes in the said State. A copy of the Complaint is annexed hereto.

2. Such Complaint requested, among other relief, a Temporary and Permanent Injunction restraining the members from conducting any legislative business until the adoption of, and requiring the holding of special election

under, a constitutional redistricting plan, with appropriate action to guarantee that all citizens of the State have in fact been given the right to vote in such new elections.

3. The next regular session of the Legislature of the State of Mississippi is scheduled to meet on January 5, 1966. The members of such Legislature were elected in elections held in the Fall of 1963.

4. On or about October 27, 1965 a statutory three judge court, consisting of Judges Coleman, Cox and Russell, was constituted.

5. On November 6, 1965 the Defendants moved the Court for an extension of time of forty-five (45) days in which to make defense to the Plaintiffs' Complaint.

6. On November 6, 1965 the Court, by Cox , J., granted such Motion ex parte.

7. From November 17, 1965 to December 3, 1965 the Plaintiffs made efforts to obtain an Immediate Hearing on their prayer for a Temporary Injunction, but no such hearing date was fixed by the Court.

8. On December 3, 1965 the Plaintiffs filed a Motion requesting an Immediate Hearing on their prayer for a Temporary Injunction.

9. Although approximately four (4) weeks have elapsed since the filing of such Motion, no ruling thereon has yet been made, nor has any date been fixed for a hearing on such Motion.

10. The Legislature of the State of Mississsissippi, which is scheduled to meet within six (6) days of the date hereof:

a. As evidenced by facts of which the Court may take judicial notice, certain of which are set forth in the Complaint annexed hereto, is mal-apportioned, in violation of the constitutional rights of the Plaintiffs and the citizens of the State of Mississippi;

b. As evidenced by facts of which this Court may take judicial notice, certain of which are set forth in the Complaint annexed hereto and many of which have been found in numerous decisions of the Courts of the United States, was elected in elections in 1963 in which a large part of its citizenry was not allowed freely to participate or vote;

c. As evidenced by facts of which this Court may take judicial notice, certain of which are set forth in the Complaint annexed hereto and certain

of which have been found in decisions of the Courts of the United States, has a long record of acting legislation directly, seriously and adversely affecting the basic rights and interest of the Plaintiffs and of others thus far excluded from free participation in the electoral processes of the State;

d. Will, unless restrained, consider, and may enact, a plan or plans of reapportionment creating State Legislative and United States Congressional Districts in such a manner as to deny improperly to the Plaintiffs and the citizens of the State the right to fair, just and equitable representation meeting constitutional requirements and has, as a matter of fact, adopted approximately four (4) years ago, a plan of reapportionment on its face failing to meet such standards.

WHEREFOR, the Plaintiffs pray that an order may issue:

1. Directing the said statutory three judge court to act upon the Plaintiffs' Motion for an Immediate Hearing promptly;

2. Directing that such action include provisions for a Hearing on the prayer for a Temporary Injunction on or before January 6, 1966;

or in the alternative,

3. Enjoining the Defendants from conducting any legislative business until after the completion of a Hearing on the Plaintiffs' prayer for a Temporary Injunction.

Respectfully submitted this 29th day of December, 1965.

THE PLAINTIFFS

By Peter Marcuse
Their Attorney
49 Leavenworth Street
Waterbury, Connecticut

Mississippi

RECEIVED
JAN 5 1966
YLADECK, ELIAS, FRANKLE & YLADECK

IN THE UNITED STATES DISTRICT COURT FOR THE

SOUTHERN DISTRICT OF MISSISSIPPI

JACKSON DIVISION

PEGGY J. CONNOR, ET AL, Plaintiffs,	)	
VS.	)	CIVIL NO. 3830
PAUL B. JOHNSON, ET AL, Defendants.	)	

PRELIMINARY STATEMENT OF

ISSUES OF FACT AND OF LAW

In response to the Notice of Call for Setting Three-Judge Cases, the major issues of fact in the above-captioned action are:

1. Were the plaintiffs, or members of the class which they represent, denied their right to vote in the elections conducted in November, 1963, in which the present session of the legislatures of the State of Mississippi were elected.

2. What is the population of each of the districts from which are elected members of the Mississippi House of Representatives, the Mississippi Senate, and the United States House of Representatives from Mississippi.

3. What does the history of the legislature of the State of Mississippi show may be anticipated from it in acting to remedy the malapportionment and the denial of the right to vote shown by the facts that exist.

The major issues of law in the above-captioned action are:

1. Does the denial of the right to vote shown by the facts constitute a denial of equal protection of the laws to the plaintiffs in such manner as to entitle them to relief of the general nature requested in the plaintiffs' complaint.

2. Does the population per district for the Mississippi House of Representatives, the Mississippi Senate, and the United States House of Representatives from Mississippi show such an inequality as to entitle the plaintiffs to relief of the general nature requested in the plaintiffs' complaint.

3. Do the foregoing facts, coupled with the history of the legislature of the State of Mississippi, entitle the plaintiffs to the specific items of relief requested.

Respectfully submitted,

Peter Marcuse

PETER MARCUSE

Miss. Reapportionment Case

IN THE UNITED STATES DISTRICT COURT FOR THE

SOUTHERN DISTRICT OF MISSISSIPPI

JACKSON DIVISION

PEGGY J. CONNOR, ET AL,)
Plaintiffs,)
)
vs.) CIVIL ACTION
) NO. 3830
PAUL B. JOHNSON, ET AL,)
Defendants.)

BRIEF FOR DEFENDANTS ON ISSUES
PRESENTLY PENDING BEFORE THE COURT

As instructed by the Court on January 7, 1966, defendants present herewith their brief on the legal issues presently pending before the court by stating first the text of the pleading whereby the issue was raised followed by brief in support thereof.

I.

Motion To Dismiss

"Defendants in the above-styled cause come, by their attorney, and respectfully move the Court to dismiss the Complaint for lack of jurisdiction over the person of the defendants, and in support of the Motion show unto the Court the following, to-wit:

"(1) Plaintiffs' action, although nominally directed against the individual defendants as officers of the State,

"asks the Court to impose compulsion against the sovereign State of Mississippi; and the suit in substance is a suit against the Government over which the Court has no jurisdiction in the absence of consent, which has not been given.

"(2) Plaintiffs seek to have the Court declare that a wrong exists; and the relief sought by plaintiffs is that the Court enjoin the responsible state officers from meeting for the purpose of correcting the alleged wrong or conducting any other business of State Government.

"For the reasons set forth above, and readily apparent from the face of the Complaint, defendants move that the Complaint be dismissed for lack of jurisdiction of the Court over the defendants to grant the relief sought by the plaintiffs.

"Respectfully moved this the 17th day of December, A. D., 1965.

Alternative Plea In Abatement

"Defendants respectfully move, alternatively and only in the event the foregoing Motion is not sustained, the Court to order the abatement of this action until such time as the plaintiffs amend their Complaint as follows, to-wit:

"(1) By dropping from the Complaint parties defendant those named defendants over which the Court does not have jurisdiction in the capacity in which they are sued herein.

"(2) By removing from the prayer of the Complaint each of the requests for specific relief the granting of which would effectively prohibit the State of Mississippi from correcting the alleged wrong which plaintiffs ask that the Court declare exists.

"Respectfully moved this the 17th day of December, A. D., 1965."

Questions presented by the motion:

I. Does the Court have jurisdiction of the person of the defendants: the Speaker of the Mississippi House of Representatives, as a representative of each member of the Legislature, as a class; the President Pro Tempore of the Mississippi Senate, as a representative of each Senator, as a class; the Governor, Secretary of State and Attorney General of Mississippi, in any capacity other than their ex officio positions as members of the State Election Commission; to order the relief prayed for by plaintiffs?

II. In the event the Court should find that it does have jurisdiction of certain of the defendants but not to grant all of the relief prayed for: should the action be abated until the plaintiffs have amended their Complaint; (a) by dropping the defendants over which the Court does not have jurisdiction in the capacity in which they are sued; and (b) by removing from the prayer of the Complaint each of the requests for specific relief the granting of which would effectively prohibit the State of Mississippi from correcting the alleged wrong which plaintiffs ask that the Court declare exists.

To better appreciate the significance of the motion, it is desirable to examine the prayers for relief as set forth in the Complaint. The prayers are:

"16. WHEREFORE, plaintiffs, on behalf of themselves and all other similarly situated, pray that this Court:

"a. Assume jurisdiction in this matter and convene a statutory three-judge court pursuant to Title 22, United States Code Sections 2281 et sec. (sic)

"b. Declare plaintiffs' rights to the effect that the present Mississippi Legislature was elected and is sitting in violation of the Fourteenth Amendment to the Federal Constitution, the Fifteenth Amendment to the Federal Constitution and Article IV, Section 4 thereof.

"c. Declare plaintiffs' rights to the effect that the present scheme of apportionment of the Mississippi Legislature and of Congressional Districts in the State of Mississippi violates the aforesaid provisions of the United States Constitution; and that the sections of the Mississippi Constitution and statutes relating to such apportionment, or providing or permitting discrimination against any citizen of the State of Mississippi because of his race or color, now in effect or in effect for the elections conducted for the incumbent members of the Mississippi Legislature or the incumbent members of Congress from Mississippi, are unconstitutional as repugnant to the United States Constitution and therefore are null, void, frustrate and of no effect.

"Further, plaintiffs, on behalf of themselves and all others similarly situated, pray this court to issue a temporary and permanent injunction to:

"d. Enjoin defendants from carrying out each and any constitutional or legislative duty or right pertaining to the conduct of the legislative business of the State of Mississippi. (Emphasis ours)

"e. Enjoin the conduct of any primary, general or special election for the Mississippi State Legislature until such time as this Court finds that the plaintiffs possess the rights guaranteed them by the Constitution of the United States.

"f. Require the defendants to take such action as may be appropriate to remedy the denial by them of the right to vote to the plaintiffs and others similarly situated.

"g. Appoint a special master to prepare a plan of apportionment for the House of Representatives and the Senate of the State of Mississippi, and the Congressional Districts of the State of Mississippi, in such manner as to take into account all factors relevant to the protection of the rights of the plaintiffs and the Negro residents and voters of the State of Mississippi.

"h. Require the holding of a special election for the said House and Senate when the foregoing has been accomplished.

"i. Further, the plaintiffs pray that this Court allow the plaintiffs their cost herein including reasonable attorney fees.

"j. Further, plaintiffs pray that this Court retain jurisdiction to supervise and guarantee the proper performance of the foregoing, and to grant such other and further relief as to this Court seems just, equitable and proper."

Attention is called to the fact that the Plaintiffs pray that this Court declare that a wrong exists, and that the Court enjoin the responsible State officials from carrying out each and any constitutional or legislative duty or right pertaining to the conduct of the legislative business of the State; thereby effectively prohibiting the responsible State officials from correcting that alleged wrong. While asking that the Court enjoin the Legislature from meeting, Plaintiffs would have the Court to direct the Defendants to meet solely to remedy the alleged denial to them of the

right to vote. By the passage of Chapters 10 through 19, General Laws of Mississippi, Extraordinary Session of 1965, the right of all qualified citizens of this State to vote in primary, special and general elections was adequately secured by the Legislature, as it is constituted. This matter will be discussed in greater detail hereinafter.

By virtue of the fact that the right to vote has been secured by the Legislature, as it is presently constituted, in such a manner that the denial of the right to vote cannot be an issue in this case, the principal relief prayed for as against these defendants is that they be enjoined from carrying out each and any constitutional or legislative duty or right pertaining to the conduct of the legislative business of the State of Mississippi.

The fact that the Legislature has duly and properly convened in its Regular Biennial Session for the year 1966 without interference from the Court does not, we submit, change the basic lack of authority of the Court to enjoin the Legislature from meeting. If the Court had jurisdiction to enjoin the Legislature from meeting before it convened, the Court would certainly have the authority to order the Legislature to disband.

Such an order to disband the Legislature or to enjoin it from carrying out its constitutional and legislative duties

"compulsion, which the court is asked to impose, may be compulsion against the sovereign, although nominally directed against the individual officer. If it is, then the suit is barred, not because it is a suit against an officer of the Government, but because it is, in substance, a suit against the Government over which the court, in the absence of consent, has no jurisdiction.

* * *

"In a suit against an agency of the sovereign, as in any other suit, it is therefore necessary that the plaintiff claim an invasion of his recognized legal rights. If he does not do so, the suit must fail even if he alleges that the agent acted beyond statutory authority or unconstitutionally. But, in a suit against an agency of the sovereign, it is not sufficient that he make such a claim. Since the sovereign may not be sued, it must also appear that the action to be restrained or directed is not action of the sovereign. The mere allegation that the officer, acting officially, wrongfully holds property to which the plaintiff has title does not meet that requirement. True, it establishes a wrong to the plaintiff. But it does not establish that the officer, in committing that wrong, is not exercising the powers delegated to him by the sovereign. If he is exercising such powers the action is the sovereign's and a suit to enjoin it may not be brought unless the sovereign has consented." (Emphasis ours.)

Even though the Court, in both Malone, supra, and Larson, supra, was dealing with sovereign immunity as it applies to agencies of the Federal Government, the principles announced are equally applicable to an action against state officers because such action not only involves sovereign immunity but this Court is prohibited by the Eleventh Amendment to the United States Constitution from exercising jurisdiction in such cases.

The Eleventh Amendment, supra, provides:

> "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or subjects of any Foreign State."

In Parden vs. Terminal Railway of the Alabama State Docks Department, 377 U. S. 184, 12 L. Ed. 2d 233, 84 S. Ct. 1207, the Court said:

> "Although the Eleventh Amendment is not in terms applicable here, since petitioners are citizens of Alabama, this Court has recognized that an unconsenting State is immune from federal-court suits brought by its own citizens as well as by citizens of another State. Hans vs. Louisiana, 134 US 1, 33 L. ed 842, 10 S Ct 504; Duhne vs. New Jersey, 251 US 311, 64 L ed 280, 40 S Ct 154; Great Northern Life Ins. Co. v. Read, 322 US 47, 51, 88 L ed 1121, 1124, 64 S Ct 873; Fitts v McGhee, 172 US 516, 524, 43 L ed 535, 539, 19 S Ct 269."

Defendants, therefore, submit that the Court is without jurisdiction to enjoin the Legislature from meeting or to order that the Legislature be disbanded. Since injunction of the Legislature from meeting is the principal relief prayed for that has not been heretofore effectively granted, we come down to the second question stated above.

Defendants do not contend that the Court is without jurisdiction of the subject matter to hear and determine a case involving legislative re-apportionment. Baker vs. Carr, 369 U. S. 186, 7 L. Ed. 2d 663, 82 S. Ct. 681, decided: (a) that the Court possessed jurisdiction of the subject matter; (b) that a justiciable cause of action was stated upon which the Court could grant appropriate relief; and (c) individual citizens, electors and taxpayers had standing to challenge the apportionment statutes of a state.

Because of the far-reaching effect of Baker vs. Carr, supra, the Court has expressed guidelines and refinements in recent cases. In Reynolds vs. Sims, 377 U. S. 533, 12 L. Ed. 506, 84 S. Ct. 1362, it was stated that:

"We feel that the District Court in this case acted in a most proper and commendable manner. It initially acted wisely in declining to stay the impending primary election in Alabama, and properly refrained from acting further until the Alabama Legislature had been given an opportunity to remedy the admitted discrepancies in the State's legislative apportionment scheme, while initially stating some of its views to provide guidelines for legislative action. And it correctly recognized that legislative reapportionment is primarily a matter for legislative consideration and determination, and that judicial relief becomes appropriate only when a legislature fails to reapportion according to federal constitutional requisites in a timely fashion after having had an adequate opportunity to do so."

In Scott v. Germano, 14 L. Ed 2d 477, 85 S. Ct. _____, a district court had refused to stay further proceedings in the case before it pending determination of the same issue by a state agency (Supreme Court of Illinois). In vacating the district court's order, the Supreme Court in a per curiam opinion stated:

"We believe that the District Court should have stayed its hand. The power of the judiciary of a State to require valid reapportionment or to formulate a valid redistricting plan has not only been recognized by this Court but appropriate action by the States in such cases has been specifically encouraged."

In Toombs vs. Fortson, 241 F. Supp. 65 (1965), the United States District Court for the Northern District of Georgia in dealing with a legislative apportionment case said:

"We deem the duty of the court in a case such as this to rest on two considerations. First, the constitutional rights of plaintiffs must be accorded, and, if possible, by the state and not the court. Second, this should be accomplished within the ambit of the public interest that is involved in allowing the state political and governmental process to function in a manner so as to do as little harm as possible to other areas and functions for which the state is responsible."

In conclusion on the first motion, Defendants respectfully submit that the Court is without jurisdiction to grant the relief prayed for as against the Defendants members of the Legislature and for that reason the Complaint should be dismissed.

Alternatively, Defendants respectfully submit that the action should be abated until such time as the Plaintiffs have amended their Complaint by dropping as parties defendant those Defendants over which the Court does not have jurisdiction in the capacity in which they are sued and by removing from the prayer of the Complaint each of the requests for specific relief the granting of which would effectively prohibit the State of Mississippi from correcting the alleged wrong which Plaintiffs ask the Court to declare exists.

II.

MOTION TO STRIKE

"Defendants in the above-styled cause come, by their attorney, and respectfully move the Court to strike certain portions of the Complaint, and in support of the Motion show unto the Court the following, to-wit:

"(1) The allegation on page 2 of the Complaint that 'Plaintiffs Connor, Taylor, Crowell, Carneigie and Hayes are United States citizens, citizens of the State of Mississippi, Negro residents of Forrest, Lauderdale, and Holmes Counties, residents of the 4th, 8th, and 22nd Senatorial Districts who have, prior to December 1, 1964, been unlawfully prevented from exercising their right to vote in primary, general and/or special elections for members of the Legislature of the State of Mississippi' is redundant, immaterial, directly in conflict with the allegation immediately preceding it and is prejudicial to these defendants.

"(2) The entire Article IV, and each separate paragraph thereof, entitled 'The Denial of the Right to Vote' is redundant, impertinent, scandalous and prejudicial to these defendants; the right to vote is firmly established and cannot be considered in this case because the plaintiffs allege that they are qualified to vote and all those they propose to represent as a class must of necessity be, also, qualified to vote or they would not fall within that class; and the question of voting rights is not a proper subject for consideration by a statutory Three-Judge Court.

"(3) Striking from the Complaint the redundant, immaterial, impertinent and scandalous matter will not materially effect the right of the plaintiffs to prove their case for congressional redistricting and legislative reapportionment and to obtain the relief, if any, to which they are entitled.

"WHEREFORE PREMISES CONSIDERED, Defendants respectfully move the Court to enter its order striking those allegations of the Complaint which are found by the Court to be redundant, immaterial, impertinent or scandalous and prejudicial to these defendants.

"Respectfully moved this the 17th day of December, A. D., 1965.

ALTERNATIVE MOTION FOR MORE DEFINITE STATEMENT

"Defendants respectfully move, alternatively and only in the event all of the foregoing motion is not sustained, the Court to order the plaintiffs to more definitely state the paragraphs of the Complaint which are not stricken to show unto these defendants the following concerning the allegations not stricken.

"(1) The acts, if any, that are charged to these defendants concerning the alleged denial of certain plaintiffs the right to vote prior to December 1, 1964, stating specifically the acts charged, the date, time and place of the act, or acts, and persons present when the alleged acts occurred.

"(2) A statement of the act, or acts, if any, of these defendants in attempting in any way to accomplish any of the general acts charged in Article IV, and each paragraph thereof, of the Complaint setting forth the date, time, place, persons present and what act, or acts, were allegedly done by these defendants for the purpose of accomplishing any of the acts charged.

"WHEREFORE PREMISES CONSIDERED, Defendants respectfully move the Court, alternatively and only in the event the motion to strike is not sustained in its entirety, to order the plaintiffs to more definitely state those acts of alleged wrongful conduct charged against these defendants so that they may properly prepare to defend the charges.

"Respectfully moved this the 17th day of December, A. D., 1965."

Questions presented by the motion:

III. Can the individual plaintiffs, who allege that they are, in fact, qualified electors of the State, sue in a representative or class action for the alleged denial of the right to vote to others who are members of a class to which the plaintiffs do not belong?

IV. In the event the Court should find: (1) that the alleged denial of the right to vote is a proper matter for consideration by a statutory Three-Judge Court; and (2) that the plaintiffs have a right to represent a class of plaintiffs to which they do not belong; are these defendants entitled to a more definite statement of the acts charged against them concerning the alleged denial of the right to vote?

By this motion made under the provisions of Rule 12(f), F.R.C.P., Defendants seek to have the Court order stricken from the Complaint all of those allegations dealing with the alleged past acts of denial of the right to vote. The rule authorizes the Court, in its discretion, to strike redundant, immaterial, impertinent or scandalous matter.

Past acts of alleged denial of the right to vote are wholly foreign to the issue of legislative apportionment or congressional districting; they have no essential or important relationship to the issues involved and are unnecessary for consideration of those issues; they do not pertain to the issues involved and proof of such alleged past denials of the right to vote should not be received by this Court; and the unnecessary

allegations are derogatory and irrelevant to the issues of legislative apportionment and congressional districting. Section 367, F. P. & P., Barron & Holtzoff.

The allegations that certain of the Plaintiffs were prior to a certain date denied the right to vote is in direct conflict with the allegations immediately preceding to the effect that the same Plaintiffs are now and have been qualified electors. Since they are now qualified electors, and have standing to maintain this action, Baker vs. Carr, supra, their status with regard to the right to vote in the past cannot be relevant or material to the issues of the case.

Plaintiffs allege that they represent all persons, as a class, who are not qualified electors even though it is alleged that they are so qualified. The question then is not whether the right to vote may at one time have been denied to certain Plaintiffs, but rather whether such alleged denial in the past is material to the issue of legislative apportionment and congressional districting.

Plaintiffs do not have standing to sue for a class of persons when they do not belong to that class. Those who are qualified electors cannot maintain a class action for those who it is alleged are not. Bailey vs. Patterson, 369 U. S. 31, 7 L. Ed. 2d 512, 82 S. Ct. 549; McCabe vs. Atchison T & SF Ry. Co., 235 U. S. 151, 59 L. Ed. 169, 35 S. Ct. 69.

Since Plaintiffs in this case do not even have standing to sue for the alleged denial to others of the right to vote, it would, we submit, be proper to order all allegations concerning such alleged denial stricken from this Complaint. Kinnear-Weed Corporation vs. Humble Oil and Refining Co., 214 F. 2d 891, affirmed a district court's order striking from a Complaint those allegations upon which the Plaintiffs could not have as a matter of law recovered.

As heretofore shown, p. 5, supra, the Legislature of Mississippi made basic changes in the registration and election statutes of the State in an extraordinary session in 1965. To implement the changes, an amendment to the Constitution of the State was submitted to the qualified electors and approved on August 17, 1965. The right of all qualified citizens to vote has been assured by these changes and allegations concerning alleged denials are prejudicial to these Defendants and their right to defend this case in this Court and in the Supreme Court.

It is submitted that the allegations are scandalous and could serve no other purpose than to prejudice this Court against these Defendants because the alleged denial of the right to vote is not a proper subject for determination by a statutory Three-Judge Court. The three-judge requirement comes into play only when an injunction is sought upon the ground of the unconstitutionality of a statute. 28 U.S.C.A. 2281, et seq. The registration and voting statutes currently in force in Mississippi are not being attacked and are presumed to be valid. See Bailey vs. Patterson, supra.

Should the Court find that allegations concerning the alleged denial of the right to vote are redundant, immaterial, impertinent or scandalous and that the presence of such allegations in this Complaint are prejudicial to these defendants and order all such allegations stricken, such an order will not affect the right of the plaintiffs to prove their case for legislative re-apportionment and congressional redistricting.

The test for constitutionally acceptable legislative apportionment is a rational basis with population being of primary importance. Invidious discrimination has been held to exist when a legislative district composed of a small number of people is permitted to elect the same number of legislators as a legislative district composed of a large number of people when the difference does not have a rational basis or acceptable explanation. Baker vs. Carr, supra; Reynolds vs. Sims, supra; YMCA vs. Lomenzo, 377 U. S. 633, 12 L. Ed. 568, 84 S. Ct. 1418; Maryland vs. Tawes, 377 U. S. 656, 12 L. Ed. 2d 595, 84 S. Ct. 1442; Davis vs. Mann, 377 U. S. 678, 12 L. Ed. 2d 609, 84 S. Ct. 1453; and Roman vs. Sincock, 377 U. S. 695, 12 L. Ed. 2d 620, 84 S. Ct. 1462.

It has likewise been held that congressional districts are more constitutionally acceptable and more likely to receive Court approval if the district within a state are composed of nearly equal population. Wessberry vs. Sanders, 376 U. S. 1, 11 L. Ed. 2d 481, 84 S. Ct. 526.

The granting of or the denial of the right to vote has not been found to be a factor considered by the Court in either

legislative or congressional apportionment cases. Since this case involved both legislative and congressional apportionment, the right to vote or the alleged denial of such right is not material to the issues presented and Plaintiffs' right to relief, if any, will not be altered by striking all allegations concerning such right or its denial from this Complaint. If Defendants are correct in their interpretation of the authorities cited above, the motion to strike will be sustained and the Court will not be called upon to rule on the Alternative Motion for a More Definite Statement.

If Defendants are incorrect in their interpretation of the authorities cited above, it is submitted that they are entitled to have their Alternative Motion for a More Definite Statement sustained as to all parts and paragraphs of the Complaint not stricken.

Under the law of Mississippi, these Defendants do not have anything whatsoever to do with the registration of qualified citizens to vote. No statute of this State places any duty or responsibility upon any of these Defendants to take applications for registration or register those found to be qualified. The alternative motion made under Rule 12(e), F.R.C.P. is proper because the allegations to which it is addressed are so vague and ambiguous that these Defendants cannot reasonably be required to frame a responsive pleading thereto.

The allegations concerning certain of the named Plaintiffs and someone's alleged denial to them of the right to register

and vote prior to a certain date is not directed to these defendants or any other named person over whom the Court now has jurisdiction. The alternative motion requests that the Plaintiffs be required to state with definiteness the connection, if any, between the alleged denial and act or acts of these Defendants or any of them.

The entire Article IV, and each separate paragraph thereof entitled "The Denial of the Right to Vote", is so ambiguous and vague as to these said Defendants that they cannot reasonably fashion a responsive pleading thereto. The allegations are couched in general terms that could more properly be characterized as a slanderous political indictment of an entire state than allegations upon which these Defendants could responsively plead and upon which the Court could hear evidence and fashion appropriate relief.

There is no allegation or charge that these Defendants or any of them engaged in any of the general activities alleged. Since these Defendants do not have any legal connection with registering voters and none of the allegations of the Complaint dealing with the alleged denial of the right to vote are directed with any particularity toward any one Defendant, we submit that the allegations are comparable to charges of fraud or mistake and the circumstances constituting the fraud or mistake should be stated with particularity as required by Rule 9(b), F.R.C.P. See Tucker vs. National Linen Service Co., (5 Cir. 1953), 200 F. 2d 858; McGuire v. Todd (5 Cir. 1952), 198 F. 2d 60 ; Crawford vs. Lydick, (USDC, WD Mich. 1959), 179 F. Supp. 211; and Morgan vs. Sylvester, (USDC, SD NY 1954, 125 F. Supp. 380.

In conclusion on the second motion, Defendants respectfully submit that all allegations of the Complaint dealing with the alleged denial of the right to vote are redundant, immaterial, impertinent, scandalous and prejudicial to these Defendants and should be ordered stricken by the Court.

Alternatively and only in the event all of the Motion to Strike is not sustained, Defendants respectfully submit that the Plaintiffs should be ordered to more definitely state the allegations dealing with the right to vote, particularly stating therein the acts, if any, charged against these Defendants concerning the alleged denial of certain Plaintiffs the right to vote prior to December 1, 1964, stating specifically the acts charged, the date, time and place of the act, or acts, and the persons present when the alleged acts occurred; and the Plaintiffs be required further to state with particularity the act or acts, if any, these Defendants in attempting to accomplish any of the general acts charged in Article IV of the Complaint, and each paragraph thereof, setting forth the date, time, place, persons present and what act or acts were alleged to have been done by these Defendants for the purpose of accomplishing any of the acts charged so that these Defendants may properly prepare a responsive pleading to the Complaint and properly prepare for the defense of this case.

III.

MOTION TO DROP PARTY

"Defendants in the above-styled cause come, by their attorney, and respectfully move the Court to order the plaintiff, Mississippi Freedom Democratic Party, dismissed and dropped from this cause as a party plaintiff, and in support of the motion show unto the Court the following, to-wit:

"(1) The unincorporated association does not have capacity to sue under the law of the State of Mississippi.

"(2) The unincorporated association does not allege that the suit in its common name is for the purpose of enforcing for or against it a substantive right existing under the Constitution or laws of the United States, but alleges that it '. . .brings this suit on its on behalf and on behalf of its members.'

"(3) The unincorporated association does not possess for itself the right to vote or be represented in the Congress or the Mississippi Legislature; and it cannot affirmatively assert personal constitutional rights of or for its members; which said rights may be asserted only by the individuals possessing such rights.

"(4) Dropping the unincorporated association, which is neither a proper, necessary or indispensable party, will not materially effect the rights, if any, of the individual plaintiff to the relief sought.

"For the above and foregoing reasons, which show that the unincorporated association is misjoined as a party-plaintiff, defendants respectfully move the Court to enter its order dismissing the Mississippi Freedom Democratic Party by dropping that unincorporated association from the cause as a party-plaintiff.

"Respectfully moved this the 17th day of December, A. D., 1965."

Question presented by the motion:

V. Can the Mississippi Freedom Democratic Party, that allegedly ". . .brings this suit on its own behalf and on behalf of its members," assert personal constitutional rights, which it does not have or possess, for and on behalf of others?

The Motion to drop the Mississippi Freedom Democratic Party from the Complaint as a party-plaintiff is based upon the lack of that unincorporated association of authority to sue upon the facts alleged in the Complaint; as a consequence of which that unincorporated association is not a proper, necessary or indispensable party to this action.

It is alleged on page 2 of the Complaint that:

> "The Mississippi Freedom Democratic Party is a voluntary unincorporated association of residents and citizens of the State of Mississippi interested in freely exercising their right to vote and to participate fully in the political life of that State, which brings this suit on its own behalf and on behalf of its members."

An unincorporated association does not have the capacity to sue under the law of Mississippi.

In Section 133, Mississippi Chancery Practice, Griffith, the rule is stated as follows:

> "§ 133. A party complainant must be one in esse.-- It has already been stated that a party complainant must be one in esse and must have in himself or itself some real interest. Therefore a school without any sort of regular or even imperfect corporate existence cannot be made a party to a suit. A party must have some legal entity. Similarly, a religious society which has never organized itself into a corporation, or into an organized body as provided by statute, cannot act or be dealt with as such in legal proceedings. A partnership, as such, is not regarded under this rule as an entity but partners must sue or be sued in the name of the individuals composing the partnership."

The rule thus summarized is based upon pronouncements by the Mississippi Supreme Court in Pierce vs. Hunter, 73 Miss. 754, 19 So. 660; Paine's Chapel vs. Aberdeen Co., 120 Miss. 12, 81 So. 650; and Blackwell vs. Reid, 41 Miss. 102.

Rule 17(b), F.R.C.P., provides:

> "In all other cases capacity to sue or be sued shall be determined by the law of the state in which the district court is held, except (1) that a partnership or other unincorporated association, which has no such capacity by the law of such state, may sue or be sued in its common name for the purpose of enforcing for or against it a substantive right existing under the Constitution or laws of the United States, . . ."

As heretofore shown, the unincorporated Plaintiff does not allege that it is suing for the purpose of enforcing for or against itself a substantive right existing under the Constitution or laws of the United States. Instead, it alleges that it ". . .brings this suit on its own behalf and on behalf of its members."

The action is directed to the issues of (1) congressional districting; and (2) legislative apportionment. Both of these issues are Constitutional and the right of congressional and legislative representation are personal and cannot be exercised except by natural citizens.

The unincorporated association did not allege that it had a right to vote or be represented in the Congress or the Mississippi Legislature. It could not allege that such rights existed in its favor. Therefore, the provisions of Rule 17 quoted above does not apply. The Mississippi Freedom Democratic Party does not possess any substantive right to vote for and have representation in the Congress or the Mississippi Legislature either under the Constitution or the laws of the United States.

The Mississippi Freedom Democratic Party cannot affirmatively assert personal Constitutional rights of or for its members.

In Hague vs. Committee for Industrial Organizations, 307 U. S. 496, 83 L. Ed. 1423, 59 S. Ct. 954, the Court in ordering the dismissal of both corporate and unincorporated associations from a suit involving constitutional rights of individual members thereof said:

> "Natural persons, and they alone, are entitled to the privileges and immunities which Sec. 1 of the Fourteenth Amendment secures for 'citizens of the United States.' Only the individual respondents may, therefore, maintain this suit.
>
> * * *
>
> "The bill should be dismissed as to all save the individual plaintiffs, and Section B, Pars. 2, 3, and 4 of the decree should be modified as indicated."

To the same effect is the recent case of Bailey vs. Patterson, supra, wherein the Court held:

> "Appellants lack standing to enjoin criminal prosecutions under Mississippi's breach-of-peace statutes, since they do not allege that they have been prosecuted or threatened with prosecution under them. They cannot represent a class of whom they are not a part. McCabe v. Atchison, T. & S.F.R. Co., 235 US 151, 162, 163, 59 L ed 169, 174, 175, 35 S. Ct 69."

Thus it is clearly shown that where constitutional rights are involved only those parties having standing to sue whose constitutional rights are affected. The unincorporated association wholly fails to establish by allegation or by existing legal rights any bases for its participation in this suit as a party-plaintiff; and the dropping of it as

a party will not affect, change or otherwise diminish the rights, if any, of the individual plaintiffs to proceed with the action.

In conclusion on the third motion, it is respectfully submitted that the Court should order the Mississippi Freedom Democratic Party dropped from this action as a party-plaintiff.

Respectfully submitted this the 21st day of January, 1965.

PAUL B. JOHNSON, ET AL, DEFENDANTS

BY JOE T. PATTERSON, ATTORNEY GENERAL

BY Martin R. McLendon

MARTIN R. McLENDON
Assistant Attorney General
P. O. Box 220
Jackson, Mississippi

CERTIFICATE OF SERVICE

I, MARTIN R. McLENDON, Assistant Attorney General, Attorney of Record for the Defendants herein, certify that I have served a copy of the foregoing Brief upon the Plaintiffs by mailing a copy thereof by U. S. Mail, postage prepaid, to each of the Attorneys for the Plaintiffs listed on the Complaint at the addresses shown thereon.

This the 21st day of January, 1966.

Martin R. McLendon
MARTIN R. McLENDON

Draft 4/14/66

IN THE UNITED STATES DISTRICT COURT FOR THE

SOUTHERN DISTRICT OF MISSISSIPPI

JACKSON DIVISION

PEGGY J. CONNOR, ET AL,)
Plaintiffs,)
VS.) CIVIL NO. 3830
PAUL B. JOHNSON)
Defendants,)

AMENDMENT TO COMPLAINT

The Plaintiffs' Complaint in the above-captioned action is hereby amended by adding thereto the following paragraphs:

"5(h) Subsequent to the date of the filing of this Complaint, but prior to any hearing whatsoever on the merits thereof, the Legislature of the State of Mississippi adopted a new plan of apportionment for the election of members ~~for~~ to the United States House of Representatives.

5(i) The intent, purpose, and necessary effect of such new plan was to create congressional districts with subh boundaries as to dilute and in all likelihood render ineffective the right to vote of the plaintiffs in at least four of the five newly created districts.

5(j) The boundaries of the congressional districts as thus newly established bear no reasonable relationship to any geographic, economic, social or other factor which may be legitimately taken into account in the establishment of such boundaries and to the contrary are based on factors, including specifically the factor of race, which may not legitimately be taken into account in the establishment of such boundaries.

5(k) All of the apportionment schemes referred to hereinabove were adopted by a legislature sitting in violation of the Constitution and laws of the Unites States, and the State of Mississippi, and the aforesaid new congressional redistricting plan was adopted by a legislature sitting after the filing of a Complaint with this Court requesting that such legislature be enjoined from carrying out any congressional or legislative duty or right pertaining to the conduct of

the legislative business of the State of Mississippi, and requesting the appointment of a Special Master to prepare a new plan of apportionment for congressional districts of the State of Mississippi."

PLAINTIFFS

By_____
Their Attorney

DRAFT 4/14/66

IN THE UNITED STATES DISTRICT COURT FOR THE

SOUTHERN DISTRICT OF MISSISSIPPI

JACKSON DIVISION

PEGGY J. CONNOR, ET AL)
Plaintiffs)
VS.)
PAUL B. JOHNSON) CIVIL NO. 3830
Defendants)

MOTION FOR IMMEDIATE HEARING ON PRAYERS FOR TEMPORARY INJUNCTIVE RELIEF

THE PLAINTIFFS RESPECTFULLY REPRESENT.

1. On October 19, 1965 the Plaintiffs filed the present Motion in the above captioned matter with the District Court for the Southern District of Mississippi requesting a Temporary and Permanent Injunction as therein set forth.

2. On December 3, 1965, no assignment of a hearing on the Prayers for a Temporary Injunction contained therein having been ordered, the Plaintiffs filed a Motion with this Court requesting an Immediate Hearing on their Prayer for a Temporary Injunction.

3. On January 7, 1966 this Court ordered the filing of Briefs on all pending Motions and on January 20, 1966 the Plaintiffs filed their Briefs on such pending Motions, including the Motion for an Immediate Hearing on their Prayer for a Temporary Injunction.

4. No decision has been rendered on any of the pending Motions, nor has nay hearing yet been assigned by this Court.

5. The Legislature of the State of Mississippi convened in regular session on January 5, 1966, and may adjourn within the immediate future.

6. Should the Plaintiffs be found to be entitled to relief on its Prayer that the legislature be enjoined from sitting for the reasons set forth in the Complaint, and such finding be made after the adjournment of the present session, all actions taken by it at such session may be found to be null and void and of no effect under the authority contained in the decision of the United States Court of Appeals for the Fifth Circuit, in Case No. 22552, Hamer et al vs. Campbell, et al, and no possible remedial action could be taken by such legislature to meet the

problems created by such a decision.

7. Primary elections for membership in the United States House of Representatives may be held on June 7, 1966.

8. The Plaintiffs pray an injunction against the holding of any primary election, and under the authority above cited, the holding of such elections may be held to be a nullity , and its result void and of no effect.

9. The Legislature of the State of Mississippi on April 7, 1966 adopted a new plan of apportionment for congressional districts in the State of Mississippi. Should such plan of apportionment be set aside, as requested in the Plaintiffs Complaint, after the adjournment of the present session of the Mississippi Legislature, any possiblity of further action by such Legislature on such congressional districting will have ceased to exist.

10. In the event of the occurance of any of the contingences set forth in Paragraphs 6, 8 and 9 hereof, the State of Missississippi, its officials, and its electorate will have been put to substantial expense and labor to no purpose or effect whatsoever.

WHEREFOR, the Plaintiffs respectfully request an Immediate Hearing on their Prayer for a Temporary and Permanent Injunction, contained in their Complaint.

THE PLAINTIFFS

By_____
Their Attorney

Miss reapportionments

IN THE UNITED STATES DISTRICT COURT FOR THE

SOUTHERN DISTRICT OF MISSISSIPPI

JACKSON DIVISION

PEGGY J. CONNOR, ET AL Plaintiffs, VS. PAUL B. JOHNSON, ET AL, Defendants.	)	CIVIL ACTION NO. 3830

M O T I O N

Defendants in the above styled case come, specifically reserving their objection to jurisdiction heretofore filed, and respectfully move the Court to expressly direct the entry of a summary judgment in favor of these said defendants on the congressional districting claim as set forth in the Complaint, and in support of the motion for summary judgment on that claim show unto the Court the following, to-wit:

(1) Jurisdiction of the Court is invoked only under Article IV, Section 4, the Fourteenth Amendment and the Fifteenth Amendment of the United States Constitution as the basis for jurisdiction over alleged discrepancies on two separate claims, (a) for congressional redistricting and (b) legislative reapportionment.

(2) The two claims for relief are separate and distinct for the reason that they are not in any way connected, except that the primary responsibility for both is that of the Legislature of Mississippi. A separate judgment on the congressional districting claim will expedite the hearing on the legislative apportionment claim, be more economical, more convenient to the Court and parties and will avoid prejudice by confusion of issues.

(3) House Bill 911, Regular Session, Mississippi Legislature, 1966, approved April 7, 1966, a certified copy of which is attached hereto and marked Exhibit "A", divided the State into five congressional districts. Each of the said districts is composed of contiguous counties and compact territory, and populations thereof are substantially equal with each of the other congressional districts. A copy of the Final Census Report of 1960 showing the population of Mississippi and of each county thereof, reported by the U. S. Bureau of Census and filed with the Secretary of State of Mississippi, is attached hereto and marked Exhibit "B".

(4) An application of the official census county populations to the statute presently in force and effect for the election of Congressmen during the current year shows the populations of each to be nearly equal.

First District has a total population of 449,361 and is composed of the following counties: Bolivar - 54,464; Washington - 78,638; Sunflower - 45,750; Leflore - 47,142;

Carroll - 11,177; Montgomery - 13,320; Attala - 21,335; Choctaw - 8,423; Webster - 10,580; Calhoun - 15,941; Chickasaw - 16,891; Clay - 18,933; Oktibbeha - 26,175; Lowndes - 46,639; and Monroe - 33,953.

Second District has a total population of 427,468 and is composed of the following counties: DeSoto - 23,891; Tunica - 16,826; Tate - 18,138; Panola - 28,791; Quitman - 21,019; Coahoma - 46,212; Tallahatchie - 24,081; Grenada - 18,409; Yalobusha - 12,502; Lafayette - 21,355; Marshall - 24,503; Benton - 7,723; Tippah - 15,093; Union - 18,904; Pontotoc - 17,232; Lee - 40,589; Itawamba - 15,080; Prentiss - 17,949; Tishomingo - 13,889; and Alcorn - 25,282.

Third District has a total population of 428,447 and is composed of the following counties: Warren - 42,206; Hinds - 187,045; Claiborne - 10,845; Copiah - 27,051; Jefferson - 10,142; Lincoln - 26,759; Franklin - 9,286; Adams - 37,730; Wilkinson - 13,235; Amite - 15,573; Pike - 19,655; and Walthall - 13,512.

Fourth District has a total population of 423,300 and is composed of the following counties: Issaquena - 3,576; Sharkey - 10,738; Humphreys - 19,093; Holmes - 27,096; Yazoo - 31,653; Madison - 32,904; Rankin - 34,322; Simpson - 20,454; Leake - 18,660; Scott - 21,187; Smith - 14,303; Jasper - 16,909; Newton - 19,517; Neshoba - 20,927; Winston - 19,246; Noxubee - 16,826; Kemper - 12,277; Lauderdale - 67,119; and Clarke - 16,493.

Fifth District has a total population of 449,565 and is composed of the following counties: Lawrence - 10,215; Jefferson Davis - 13,540; Covington - 13,637; Jones - 59,542; Wayne - 16,258; Greene - 8,366; Perry - 8,745; Harrison - 119,489; Hancock - 14,039; Forrest - 52,722; Lamar - 13,675; Marion - 23,293; Pearl River - 22,411; Stone - 7,013; George - 11,098; and Jackson - 55,522.

The total population variation between the most populous district and the least populous district is approximately six per cent (6%). The variation from the norm—435,628—is approximately three per cent (3%) over and under.

(5) Democratic and Republican candidates for Congress have been nominated under the districting statute currently in force and effect and the general election is scheduled to be held on the first Tuesday after the first Monday of November, 1966.

(6) There is no genuine issue as to any material fact insofar as the claim for judicial relief on congressional districting is concerned and these defendants are entitled to a judgment dismissing that claim as a matter of law.

WHEREFORE, PREMISES CONSIDERED, these defendants respectfully move the Court to make an express determination that there is no just reason for delay and to expressly direct the entry of a summary judgment in favor of these said defendants on the claim for congressional redistricting as set forth in

the Complaint for the reason that there is no genuine issue as to any material fact on that claim or phase of the case and these defendants are entitled to a judgment of dismissal of the claim for congressional redistricting as a matter of law.

Respectfully submitted this the 1st day of July, 1966.

PAUL B. JOHNSON, ET AL,
DEFENDANTS

BY JOE T. PATTERSON, ATTORNEY GENERAL

BY Martin R. McLendon

MARTIN R. McLENDON, Assistant Attorney General
P. O. Box 220
Jackson, Mississippi

NOTICE OF MOTION

Plaintiffs will take notice that defendants will present the foregoing Motion for Summary Judgment to the Court on July 15, 1966, at 9:00 A. M. or as soon thereafter as counsel may be heard, in the U. S. District Courtroom, Post Office Building, Jackson, Mississippi.

NOTICE this the 1st day of July, 1966.

Martin R. McLendon

MARTIN R. McLENDON, Assistant Attorney General
P. O. Box 220
Jackson, Mississippi

C E R T I F I C A T E

I, MARTIN R. McLENDON, Assistant Attorney General, Attorney of Record for the Defendants herein, certify that I have served a copy of the foregoing Motion for Summary Judgment upon the Plaintiffs by mailing a copy thereof by U. S. Mail, postage prepaid, to each of the Attorneys for the Plaintiffs listed on the Complaint at the addresses shown thereon.

This the 1st day of July, 1966.

Martin R. McLendon
MARTIN R. McLENDON

IN THE UNITED STATES DISTRICT COURT FOR THE

SOUTHERN DISTRICT OF MISSISSIPPI

JACKSON DIVISION

PEGGY J. CONNOR, ET AL,)

Plaintiffs,)

vs.) CIVIL NO. 3830

PAUL B. JOHNSON, ET AL,)

Defendants,)

_____)

PLAINTIFFS' BRIEF ON QUESTIONS OF LAW AFFECTING ALL PENDING MOTIONS

I. The Defendants' Motion To Drop Party

The defendants' Motion To Drop Party is based on the capacity of an unincorporated association to sue under the laws of the State of Mississippi. While the question of standing to sue may in most cases be a question to be determined under State law, this is not the case under Rule 17(b) of the Federal Rules of Civil Procedure, which provide expressly:

> "...A partnership or other unincorporated association, which has no such capacity by the law of such state, may sue or be sued in its common name for the purpose of enforcing for or against it a substantive right existing under the Constitution or laws of the United States."

The Complaint clearly sets forth that the rights sought to be enforced are rights under the Constitution and laws of the United States.

Paragraph 1 sets forth the specific constitutional and statutory provisions on the basis of which jurisdiction is claimed, and paragraphs 8, 9 and 10 each refer to specific constitutional provisions alleged to be the basis for the plaintiffs' causes of action.

The defendants' Motion To Drop Party further apparently claims that an unincorporated association cannot assert constitutional rights of its members; the law is to the contrary.

In Hague vs. Committee For Industrial Organization, 101 F. 2d 774 at 790, the Court states,

> "...The appellants contend that because one of the appellees is a corporation and others are unincorporated associations they are not entitled to enjoy some of the civil rights which are the subject of the suit. All of the appellees referred to however are membership corporations or associations and it clearly appears that the suit was brought by them for the benefit of their members. In our opinion these appellees were proper parties and able to conduct the suit in representative capacities on behalf of the interests of their respective members. International News Service v. Associated Press, 248 U.S. 215, 39 S.Ct. 68, 63 L.Ed. 211, 2 A.L.R. 293."

In United Electrical Radio And Machine Workers vs. Baldwin, 67 F. Supp 235 at 239, the Court states,

> "...The individual plaintiffs as citizens of the United States are proper parties. The plaintiff unions, voluntary associations of individuals, are also proper parties to conduct the suit in a representative capacity in the interest of their members. Rule 17(b) Federal Rules of Civil Procedure, 28 U.S.C.A. following section 723c; Hague v. C.I.O., supra; International News Service v. Associated Press, 1918, 248 U.S. 215, 39 S.Ct. 68, 63 L.Ed. 211, 2 A.L.R. 293."

Thus there seems no doubt that the Mississippi Freedom Democratic Party is a proper party to assert the constitutional rights of its members under Rule 17(b) of the Federal Rules of Civil Procedure.

II. The Defendants' Motion To Dismiss

Paragraph 1 of the defendants' Motion To Dismiss raises the substantive question, as does the first paragraph of the defendants' Alternative Plea in Abatement, as to whether the present suit is an action, in effect, against the State of Mississippi, in such fashion that there is no jurisdiction over the named defendants without the consent of the state.

Leaving apart the basic procedural question as to whether a motion to dismiss for lack of jurisdiction over the person of the defendants is the proper

manner of raising this issue where counsel have appeared for the parties and actively begun litigation of the issues involved, the substantive law is by now so well settled that there is jurisdiction in a case such as this that citations seem almost unnecessary. A recently published study by the Twentieth Century Fund, written by Robert B. McKay, of the New York University Law School, and entitled Reapportionment, contains 182 pages summarizing and giving citations to litigation in virtually every State of the Union, in all of which jurisdiction was assumed over actions raising exactly some of the issues raised in the instant action. While the exact position of the individuals being sued varies, the defendants include governors, secretaries of State, election commissioners, legislative leaders, and others directly concerned with the electoral processes of each state. To select only a few of these citations at random:

In Sanders vs. Gray, 203 F Supp 158, Ben W. Fortson was named as a defendant in his capacity as Secretary of State of the State of Georgia.

In Sobel vs. Adams, 208 F Supp 316, Tom Adams was named as a defendant in his capacity as Secretary of State of the State of Florida.

In Baker vs. Carr, 369 U.S. 186, the defendants were the Secretary of State of the State of Tennessee, the Attorney General, the Co-ordinator of Elections, and the members of the State Board of Elections.

In Moore vs. Moore , 229 F Supp 435, the defendants were Agnes Baggett, Secretary of State of the State of Alabama, and Richmond Flowers as Attorney General of the State of Alabama.

In Barnes vs. Barnett, 241 Miss 206, 129 So 2nd 638, the defendant was the then Governor of the very State of Mississippi, and the present Attorney General represented him.

The second paragraph of the defendants' Motion To Dismiss appears to attempt to argue that there is an inconsistency among the prayers for relief contained in the plaintiff's Complaint. Here, the procedural question on the manner of raising this point cannot be left apart, since the inclusion of an inconsistent prayer for relief among ten prayers for relief is hardly grounds for dismissing a complaint. If some other motion might be appropriate to raise the questions the defendants apparently seek to raise, such other motion has not been made. A motion to dismiss in any event is improper for this purpose.

Commenting nevertheless on the substantive issue involved, the defendants state that the plaintiffs seek to have the Court declare a wrong to exist, but that the plaintiff's relief requested would prevent the defendants from acting to correct the wrong. This argument can only have any merit if the only method of correcting the wrong is in fact to have the defendants do it. Quite the contrary is in fact the case; paragraph (g) and (h) of the plaintiff's Complaint clearly requests this Court itself, through a special master, to prepare a plan of apportionment, and to require the holding of special elections pursuant to it. Such action is clearly within the power of this Court (see, for some of the numerous instances in which similar action was threatened, approved, or actually undertaken by a court,

In the Matter of Apportionment of the Michigan Legislature, 373 Mich 247, 128 NW 2nd 721.

Fortner vs. Barnett, #59, 965, Chancery Court, 1st Judicial District, Hinds County, Mississippi.

Scott vs. Germano, 381 U.S. 407.

Butterworth vs. Dempsey, 237 F Supp 302.)

and it is specifically requested here.

III. The Defendants' Alternative Plea In Abatement

While the substantive issues contained in the defendants' Alternative Plea in Abatement are so without merit as to make it seem almost unnecessary to raise procedural issues, it should nevertheless at least be pointed out that a "plea in abatement" is a motion not known to the Federal rules or normal Federal practice; that each of the points raised in the Alternative Plea In Abatement are raised in the Motion To Dismiss; that under no possible conception of proper procedure can a request to drop a party defendant be considered appropriate for anything labeled a "Plea in Abatement," nor can a request that a specific prayer for relief be removed from the other prayers of the Complaint be considered remotely relevant to anything labeled a "Plea In Abatement."

Substantively, each of the issues raised in the defendants' Plea In Abatement is discussed above under the appropriate paragraph of this brief discussing the defendants' Motion To Dismiss, and such substantive points are hereby referred to for comment on the respective paragraphs of the "Plea In Abatement".

IV. The Defendants' Motion To Strike

The first paragraph of the defendants' Motion To Strike is apparently based on a misreading of the plaintiffs' Complaint. The plaintiffs have alleged that certain of the named plaintiffs were denied the right to vote prior to December 1st, 1963, and that all of them are at the present time entitled to vote. The defendants' Motion to Strike apparently alleges an inconsistency between these two statements. It is however obvious that there is no inconsistency; each of the plaintiffs involved were denied the right to vote prior to December 1st, 1963, but obtained the right to vote subsequent to 1963, and are now qualified voters, and the Complaint properly and clearly

recites these facts.

The second paragraph of the defendants' Motion To Strike asks that "Article IV" of the plaintiffs' Complaint be stricken because it contains allegations that are redundant, impertinent, scandalous, and prejudicial. The allegations which are claimed to be offensive are apparently those which state that the plaintiffs and others in the class which they represent were denied the right to vote, by various means, in the past. These statements, far from being scandalous, are simply statements of fact which not only will be proven upon a trial of this case, but which have been found to be true in numerous decisions of this Court, the Court of Appeals for the Fifth Circuit and/or the Supreme Court of the United States. To list just a few among them:

United States v. Ramsey, 331 F. 2d 824 (C.A. 5),

United States v. Lynd, 301 F. 2d 818, 321 F. 2d 26 (C.A. 5),

United States v. Ward, 345 F. 2d 857 (C.A. 5),

United States v. Duke, 332 F. 2d 759 (C.A. 5).

As to the other adjectives applied to the allegations of the Complaint by the defendants, these allegations are not redundant, since they appear nowhere else in the Complaint; if they did it is assumed that the defendants would have moved to strike them there also. The allegations may be prejudicial to the extent that they support the plaintiffs' case and hurt the defendants' case, but if all allegations falling into such a category were stricken from any Complaint that was filed, the volume of litigation in the Courts would be reduced to a mere trickle. Finally, the allegations are of course pertinent to support the position of the plaintiffs that the denial of the right to vote constitutes a denial of the equal protection of the laws such as to entitle them to the relief requested.

V. The Defendants' Alternative Motion For More Definite Statement

The motion of the defendants for a more definite statement again raises an initial procedural question which should be dispositive of the motion. To the extent that Motions for More Definite Statement are utilized under the Federal rules, they are appropriate only to give the defendants such information as they may require in order to determine whether the plaintiffs' Complaint states a cause of action. As Rule 12(e) of the Federal Rules of Civil Procedure provides:

> "...If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, he may move for a more definite statement before interposing his responsive pleading."

This is clearly not the situation here; the information which the defendants seek in the Motion For More Definite Statement is as to evidence in support of the plaintiffs' allegations, not as to the meaning of those allegations or their import. This information may or may not be available to them upon the filing of proper interrogatories, but it is in any event not available to them through a Motion For More Definite Statement

VI. The Plaintiffs' Motion For a Hearing On Its Prayer For a Preliminary Injunction

As the record will show, on October 19, 1965, the plaintiff filed its Complaint in the instant case, requesting, in its prayers for relief, the issuance of a preliminary injunction against the defendants. On or about December 3, 1965, no assignment for a hearing on the preliminary injunction having been made to that date, the plaintiff filed a Motion For a Hearing on its preliminary injunction. To date, neither that Motion nor the Injunction itself have been assigned for a hearing. Counsel takes it therefore to be the Court's desire that the question involved in the plaintiffs' Motion For an Immediate Hearing on the Preliminary Injunction also be discussed in the present brief.

It is one of the most fundamental principles of American jurisprudence that an injunction is an extraordinary writ, the issuance of which requires a showing of irreparable injury unless it is issued; and the issuance of a preliminary injunction requires a clear showing of potentially irreparable injury

if it is not granted even prior to a full scale hearing on the permanent injunction; so that a prompt hearing on a motion for a preliminary injunction is indispensable if justice is to be done.

As the Court of Appeals for this Circuit said in Davis vs. Board of School Commissioners of Mobile County, 318 F. 2d 63 at 64,

> "... The matter of the grant or denial of the Motion For Preliminary Injunction should, as in every case, be promptly determined."

In United States vs. Lynd , 301 F. 2d 818 at 822, the Court of Appeals for the Fifth Circuit said even more clearly,

> "... The grant of temporary injunction need not await any procedural steps perfecting the pleadings or any other formality attendant upon a full blown trial of this case."

Consequently, the failure to grant a hearing on a preliminary injunction is absolutely identical to a denial of a preliminary injunction without a hearing. Such action violates the most basic concepts of fairness and equity of our system of law.

It is not here being argued that a preliminary injunction should in fact issue. It may well be, although plaintiffs will vigorously contend otherwise, that a preliminary injunction should not issue. It is only contended here at this time that plaintiff is at least entitled to a hearing on his request for such an injunction, and that a delay of over three months in granting the plaintiffs even a hearing thereon constitutes a denial to the plaintiffs of their rights without due process of law. Whether or not the preliminary injunction should issue here is not the question; whether or not the legislature should be given an opportunity to redress by itself the wrongs alleged in the Complaint is not the issue; whether the legislature is capable of taking such action or whether a master should be appointed is not the issue. The only issue at this time is whether the plaintiffs are entitled to a hearing on these matters, so that they may present their arguments and evidence in favor of an immediate issuance

of a preliminary injunction, and the defendants may present their arguments and evidence to the contrary.

It is therefore respectfully submitted that each of the defendants' motions should be denied, and the plaintiffs' Motion for an Immediate Hearing should be granted.

THE PLAINTIFFS

By_____
Peter Marcuse, Their Counsel

CERTIFICATE OF SERVICE

I, PETER MARCUSE, Attorney for the plaintiffs herein, certify that I have served a copy of the foregoing upon the defendants by mailing a copy thereof by U. S. Mail, postage prepaid, to Martin R. McLendon, Assistant Attorney General, P.O. Box 220, Jackson, Mississippi.

This day of A.D., 1966.

_____
Peter Marcuse

Mississippi
Re-Apportionment

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. .....

PEGGY J. CONNOR, *et al.*,

Appellants,

—v.—

PAUL B. JOHNSON, JR., Governor of Mississippi, *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

JURISDICTIONAL STATEMENT

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INDEX

PAGE

Opinion Below 2

Jurisdiction 2

Question Presented 2

Statute Involved 2

Statement of the Case 3

The Facts 4

The Questions Are Substantial 11

A. The Right to Vote May Not Be Denied, Directly or Indirectly, Because of Race 13

B. Congressional Districts May Not Be Established in a Racially Discriminatory Manner 14

C. The Mississippi Legislature Has Adopted a Plan Involving Racial Gerrymandering, Which Should Be Set Aside 18

D. The Issues Here Involved Have Not Heretofore Been Squarely Presented to This Court, and Lower Court Differences on Subsidiary Questions Are Now Appropriate for Resolution 22

Conclusion 23

PAGE

APPENDIX A

Judgment of the District Court 25
Opinion of the District Court 27

APPENDIX B

Map Showing District Lines Adopted by Mississippi Legislature 39

APPENDIX C

Map Showing Counties With Total Negro Population Majorities 40

APPENDIX D

Map Showing Revised Delta Plan 41

APPENDIX E

Map Showing Northern Vertical Plan 42

APPENDIX F

Table of Legislative History 43

APPENDIX G

Map Taken from *The Mississippi Story*, by McLemore and McLemore 44

APPENDIX H

Map Taken from *Mississippi: A History*, by John K. Bettersworth 45

Table of Authorities

PAGE

Cases:

Burns v. Richardson, 384 U. S. 73 (1966) 15, 16, 20, 23
Bush v. Martin, 251 F. Supp. 484 (1966) 23

Carrington v. Rash, 380 U. S. 89 (1965) 13

Eubanks v. Louisiana, 356 U. S. 584 (1958) 19

Fortson v. Dorsey, 379 U. S. 433 (1965) 15, 16, 19, 22

Gomillion v. Lightfoot, 364 U. S. 339 (1960) 13, 14, 15, 20
Grills v. Branigan, 255 F. Supp. 155 (1966), vacated sub nom. Duddleston v. Grills, 35 U. S. L. Week 3233 (January 10, 1967) 23
Guinn v. U. S., 238 U. S. 347 (1915) 13, 14

Hainsworth v. Martin, 386 S. W. 2d 202 (Civil Appeals, Texas, 1965), vacated as moot 382 U. S. 109 (1965), rehearing den. 382 U. S. 1002 (1966) 23
Harper v. Board of Elections, 383 U. S. 663 (1966) 13

Johnson v. Virginia, 373 U. S. 61 (1963) 19
Jones v. Falcey, 48 N. J. 25, 222 A. 2d 101 (1966), 222 A. 2d 134 (1966) 23

Katzenbach v. Morgan, 384 U. S. 641 (1966) 13
Kilgarlin v. Martin, 252 F. Supp. 404 (1966) 23

Lane v. Wilson, 307 U. S. 268 (1939) 13
Louisiana v. U. S. 380 U. S. 145 (1965) 13

Meeks v. Avery, 251 F. Supp. 245 (1966) 23

PAGE

N. A. C. C. P. v. Alabama, 357 U. S. 449 (1958) 19
Nixon v. Condon, 286 U. S. 73 (1932) 13
Nixon v. Herndon, 273 U. S. 536 (1927) 13

Reynolds v. Sims, 377 U. S. 533 (1964) 14
Rice v. Elmore, 165 F. 2d 387, cert. den. 333 U. S. 875 (1947) 19

Sims v. Baggett, 247 F. Supp. 96 (1965) 15, 17, 22, 23
Smith v. Allwright, 321 U. S. 649 (1944) 13
South Carolina v. Katzenbach, 383 U. S. 301 (1966) 13
Swann v. Adams, 35 U. S. L. Week 4101 (January 10, 1967) 18, 23

Terry v. Adams, 345 U. S. 461 (1953) 13, 20

U. S. v. Classic, 313 U. S. 299 (1941) 13
U. S. v. Mississippi, 380 U. S. 128 (1965) 13

Wesberry v. Sanders, 376 U. S. 1 (1964) 14
Wright v. Rockefeller, 376 U. S. 52 (1964) 15, 16, 23

United States Constitution:

Fourteenth Amendment 2, 12, 13, 14

Fifteenth Amendment 2, 12, 13, 14

Statute:

28 U. S. C. §1253 2

28 U. S. C. §2101(b) 2

House Bill No. 911, Mississippi Laws 1966 ....2, 3, 4, 5, 7, 23

Miscellaneous: PAGE

Smith, *Congressman From Mississippi* 10

Newspapers:

Jackson Daily News (January 14, 1966) 10

Jackson Daily News (March 7, 1966) 10

Jackson Clarion Ledger (April 1, 1966) 11

Jackson Daily News (April 7, 1966) 11

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. .....

PEGGY J. CONNOR, ANNE E. TAYLOR, AUGUSTA WHEADON, RALTHUS HAYES, CATHERINE CROWELL, HENRY J. KIRKSEY, ELIJAH CONWELL, JR., ALMA CARNEGIE for themselves and others similarly situated, and THE MISSISSIPPI FREEDOM DEMOCRATIC PARTY,

Appellants,

—v.—

PAUL B. JOHNSON, Governor of Mississippi, JOE PATTERSON, Attorney-General of Mississippi, HEBER LADNER, the Secretary of State of Mississippi, WALTER SILLERS, the Speaker of the Mississippi House of Representatives, GEORGE YARBROUGH, the President Pro Tempore of the Mississippi Senate,

Appellees.

JURISDICTIONAL STATEMENT

Appellants appeal from the judgment of the United States District Court for the Southern District of Mississippi, Jackson Division, sitting as a statutory three-judge court, which held that, as to the redistricting of the state of Mississippi for the election of members of the United States House of Representatives, the appellants' complaint should be dismissed, and submit this statement

to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

Opinion Below

The judgment and opinion of the District Court are set forth below in Appendix A, *infra*, p. 25 ff.

Jurisdiction

The jurisdiction of this Court to review by appeal the judgment of the three-judge District Court is conferred by 28 U. S. C. §§1253 and 2101(b).

Question Presented

Whether the congressional district lines drawn by the 1966 session of the Mississippi legislature, which, deliberately or otherwise, have a racially discriminatory effect, violate the Fourteenth and Fifteenth Amendments to the U. S. Constitution.

Statute Involved

House Bill No. 911, Mississippi Laws 1966, approved by the Governor of Mississippi on April 8, 1966, establishes the district lines for elections to membership in the United States House of Representatives. The lines established by such Bill are set forth in Appendix B, *infra*, p. 39.

Statement of the Case

The appellants' original complaint, filed on October 19, 1965, challenged the then existing congressional districting scheme in Mississippi both on racial grounds and on grounds of gross disparity of population. The complaint also attacked on similar grounds the apportionment of both houses of the Mississippi state legislature. Although the complaint prayed for a preliminary injunction, the court withheld any hearing or action on the complaint until after the completion of the regular 1966 session of the Mississippi legislature.

In its regular 1966 session, the Mississippi legislature failed to provide for reapportionment of its state legislature, and the court below ordered it to produce such a state legislative reapportionment on or before December 1, 1966. The state legislature in a special session has now passed a state reapportionment act. The validity of that reapportionment was argued before the court below on January 9, 1967, on grounds substantially similar to those presented here as to congressional redistricting.

The regular 1966 session of the Mississippi legislature did, however, enact a new congressional districting act, House Bill 911. The plaintiffs amended their complaint on July 12, 1966, specifically attacking the validity of this plan on grounds of racial discrimination and inequality of meaningful representation. A hearing was held on that amended complaint, and judgment was entered on August 30, 1966, sustaining the validity of that plan and rendering judgment for the defendants.

The Facts

House Bill 911 creates five congressional districts in each of which the white vote will, presently and in the foreseeable future, outweigh the Negro vote, and thus preserves a white majority in all five of the state's congressional districts, despite a 43% Negro population in the state as a whole, which is largely concentrated in one compact and geographically discrete section of the state. This is the inescapable effect of the Bill, and was indeed its purpose. Three separate sets of facts substantiate these conclusions: first, a statistical analysis of the district lines themselves; second, a review of all possible purposes such lines might serve, which excludes all inferences other than racial discrimination; and third, the analysis of the legislative history of the bill itself, and the history of the debates on its passage.

The basic legislative history of the bills, as to which a large mass of evidence was introduced at the trial, is summarized in Appendix F, *infra,* p. 43.

The state Senate's considerations began with a plan having one of the five congressional districts with a non-white majority, but in that district the majority was substantial enough to create at least a possibility that of the five Congressmen to be elected from Mississippi one might be a Negro. The state House approach, and the one finally adopted by the legislature, was more thoroughgoing; it attempted to make absolutely certain that there would be no meaningful non-white majority in any of the state's five districts, in order to assure an all-white Mississippi delegation to Congress. Indeed, the first plan prepared by the House, introduced January 13, 1966, provided that in the

district with the largest number of non-whites, whites retained an effective voting majority of 15,852.

As the legislative session progressed, the House and the Senate versions of a redistricting plan came closer together, until at last the Senate adopted a bill that reduced sharply the non-white majority of the *total population* in its one non-white district, and the House accepted this as providing a sufficiently safe margin of white *votes* to guarantee continuing white supremacy. The total population figures, according to the United States Census of 1960 (R. Ex. 1) thus became under the new Bill:

District	Total Population	Total White	Total Nonwhite		Majority
First	449,361	218,564	230,797	non-white	12,233
Second	427,471	243,047	184,424	white	58,623
Third	428,447	233,665	194,782	white	38,883
Fourth	423,300	214,747	208,553	white	6,194
Fifth	449,565	342,526	107,039	white	235,487

The effect of these figures on the ability of Negroes in Mississippi to vote meaningfully in congressional elections, and the facts which actually shaped the legislature's intent and purpose in adopting House Bill 911, is apparent from the *eligible voting* figures which the legislature itself used rather than the Census figures (R. Ex. 12):

District	White Eligible Voting Majority
First	32,581
Second	69,772
Third	52,632
Fourth	54,767
Fifth	143,923

The other practical way of looking at the Census figures to deduce their real meaning in Mississippi is to take the voting-age figures and apply to them the pattern of actual voter registration as of July 30, 1966, testified to as being 30% of eligibles for Negroes and 62% of eligibles for whites (R., Deposition of J. Harold Flannery). The results are substantially identical to the above:

District	White Registered Voter Majority
First	30,844
Second	64,681
Third	58,114
Fourth	54,479
Fifth	104,170

This discriminatory result was not accidental, nor was it produced by any constitutionally permissible factor. A brief look at Mississippi's history and geography will show why.

Looking at textbook maps of Mississippi (Appendices G and H, *infra*, pp. 44 and 45), it is apparent that Mississippi is divided into a number of major areas. One of these is the Delta region, a rich agricultural area adjacent to the Mississippi River that stretches from the Mississippi River eastward to the beginning of the Bluff Hills and lies primarily between the Mississippi and the Yazoo Rivers. It is an area of fertile land on which the plantation system of cotton farming, once prevalent throughout the South, achieved its greatest flowering. It is set apart as a region through the richness of its soil, the singleness of the crop produced, the unique economic system through which that crop is developed, the presence of the Mississippi river as

a common waterway and scenic feature, and historically by a unity of interest that has projected itself as a political force throughout the State for a generation. These facts are among those of which the trial court took judicial notice.

Each congressional redistricting, at least since 1894, has preserved the counties of the Delta within a single congressional district, reflecting their historic, geographic, economic and social unity. The fact that the Delta is the cotton-growing and plantation-dominated section of Mississippi and is also that part of Mississippi in which a majority of its Negro citizens live, is, of course, not a coincidence.

As long as Negroes were directly denied the franchise, this caused no problem in the establishment of voting districts. Once Negroes in Mississippi obtained the legal right to vote, in large part by decisions of this Court, their majority status in the Delta became a threat to those previously in political control of the state. The present gerrymandering of districts followed.

A brief examination of three maps demonstrates by itself the racial distortion imposed on the state of Mississippi by House Bill 911. Appendix C, *infra,* p. 40, shows, as marked, those counties that have an absolute majority of Negro citizens. Appendix D, *infra,* p. 41, presents a proposed redistricting plan, which appellants have labeled "Revised Delta Plan," which differs sharply from the plan adopted by the legislature in that it preserves the integrity of the Delta. Appendix B, *infra,* p. 39, presents a redistricting scheme dividing the counties of the Delta, *i.e.* those with Negro majorities among four different congressional districts; this is the plan which was adopted by the Mississippi legislature. Neither history, geography, topography, economics,

tradition, political subdivision lines, compactness, contiguity, or any other legitimate factor explains the lines used in this plan.

Nor does the legislature's adopted plan conform to standards of population equality when compared to the available alternatives. The difference between the largest and the smallest district under the plan adopted is 28,061; the same figure for the Revised Delta Plan is 13,672, less than half. The greatest deviation from the norm in the adopted plan is 15,332; in the Revised Delta Plan, it is 7,572. The average deviation of all five districts in the adopted plan is 11,547; in the Revised Delta Plan, it is 3,767. Clearly, the desire to achieve mathematical population equality was not decisive for the Mississippi legislature in its choice of plans.

The racial motivation of the Mississippi legislature can be seen from one further alternative plan, set forth in Appendix E, *infra,* p. 42, designated the Northern Vertical Plan. This plan substantially accepts Districts 3, 4 and 5 of the adopted plan, and simply draws the boundaries between Districts 1 and 2 vertically, to conform with the facts of Mississippi life, rather than horizontally, as the legislature did. Such a recognition of Mississippi geography and history also produces a mathematically superior plan. The average deviation in the Northern Vertical Plan is only 7,266, compared with 11,547 in the adopted plan, and the difference between the largest and the smallest districts is reduced from the 28,061 of the adopted plan to 23,740. The refusal to recognize the unity of the Delta, if only by a plan such as this, can be explained by no consideration other than the desire to divide its Negro population among other districts where their votes will be a minority and ineffective.

While the redistricting lines adopted by the Mississippi legislature, in their effect on the Negro vote, speak for themselves, an attempt has nevertheless been made to assemble all the evidence reasonably available to appellants that cast light on the specific intent of the legislature. The evidence shows that the racially discriminatory result of the redistricting lines was in fact the precise objective of the legislature. The apparent concern of the legislature was to draw the lines in such a manner that its discriminatory intent would not be so obvious as to foreclose any chance of success in the lawsuit already pending.

There are unusual problems in seeking to prove legislative intent in Mississippi. The Mississippi legislature has learned from experience that federal courts are concerned about the policy of segregation and discrimination in Mississippi, as one court after another has invalidated its legislative acts. The legislature has seen its own debates used as evidence of such unconstitutional and improper motivation; it no longer keeps any record of its own debates. Such reports as were introduced into evidence in the court below as to debates of the legislature are replete with references to the likelihood of litigation on the subject of the discriminatory nature of the present redistricting, and one legislator after another can be found advising his colleagues to talk less about the Negro vote because of the bearing upon possible litigation (R., Ex. 4-12). Proof of legislative intent must thus necessarily be based on incomplete accounts and indirect references.

Taking into account these well-known facts, what does the available evidence indicate? First, it indicates a clear awareness by the Mississippi legislature of the possibilities inherent in the conscious handling of congressional district lines to achieve desired purposes. After the 1960

census, when redistricting was required because of the elimination of a congressional seat as the result of a reduction in population, two congressional districts were combined to eliminate an annoyingly liberal congressman, as described in detail in Frank Smith's *Congressman from Mississippi.* Second, reported debates on the subject indicate a major concern for the impact of any new proposal on the actual and potential Negro vote. Brief quotations from legislators set forth in the newspaper stories introduced into evidence show this clearly (R., Ex. 4-12):

Jackson Daily News, January 14, 1966:

> "Did the Negro situation enter in this redistricting plan?" asked Rep. Odie Trenor . . . When he got no answer to his question he said, "we all know the Negro situation was the main factor."
>
> Rep. Thompson McClellan of Clay said, "When this bill is attacked in the courts they're going to look into what areas were moved, where they were moved and for what purposes they have been moved. They were moved so there shall not be a majority of certain groups in a district. The courts will consider a similar case and they'll throw this out. We will have congressmen elected at large or by districts fixed by the Supreme Court.
>
> This patently was drawn in a manner to devalue the vote of a certain group of people."
>
> Backers of the plan did not deny that the Delta area was split up to divide the heavy Negro vote.

Jackson Daily News, March 7, 1966:

> Rep. Clyde Burnes said that the House bill "had a little too much discrimination to be ignored (by the courts)."

Jackson Clarion-Ledger, April 1, 1966:

> A plan adopted by the Senate would have given the Second (District) a heavy Negro majority, but the House rejected this in favor of five districts with white majorities. Most senators agree that unless one heavily-Negro majority district is established, the government will knock the redistricting plan out through the federal courts.

Jackson Daily News, April 7, 1966:

> Rep. Thompson McClellan . . . argued . . . "Any bill that shows discrimination against a certain race they'll knock down. You are trying to take two white counties in northeast Mississippi out of the 2nd District and put a heavy Negro populated county in. They will say this bill is fraught with discrimination."

Thus, the facts are that the Mississippi legislature, itself found to be sitting in violation of Constitutional provisions, drew congressional district boundaries along clearly racial lines. The right to vote effectively in congressional elections was thereby denied to its Negro citizens. This was done with the clear and deliberate intent to discriminate.

The Questions Are Substantial

In this appeal two great constitutional principles converge in circumstances that compellingly demonstrate the denial or dilution of the free exercise of the right of franchise because of discrimination on grounds of race or color.

First. This Court has long recognized, in a wide variety of situations, that racial discrimination at the hands of

the state, whether intentional or not, is forbidden. Most often the racially discriminatory action is said to violate the equal protection of the laws of the Fourteenth Amendment; sometimes, where the right to vote is at issue, the more specific prohibition of the Fifteenth Amendment has been invoked. The question here is whether the Fourteenth and Fifteenth Amendments allow a state to grant with one hand the formal right to vote to the members of a particular racial group, while with the other hand effectively, although indirectly, depriving them of that right by the drawing of district lines in a racially discriminatory manner.

Second. More recently this Court has held that the proper drawing of congressional district lines by state legislatures is subject to judicial review to see whether such lines provide a substantially equal vote to every person within the state. The question here is whether such district lines are properly drawn where, deliberately or otherwise, their necessary effect is to cancel out the voting strength of a particular racial group.

Specifically, Negroes in Mississippi now have *pro forma* the right to vote, and *pro forma* numerically the vote of each Negro is worth substantially the same as the vote of each white. In fact, this hard-won formal right to vote has been rendered largely nugatory in Mississippi by the action of its legislature here challenged.

The question newly presented here is whether, under such facts, Negroes have not indeed been as clearly denied the right to vote as though they had been refused the right to register. Alternatively put, the question is whether district lines established to discriminate racially are not just as unconstitutional as district lines established to discriminate geographically on a population basis.

A. *The Right to Vote May Not Be Denied, Directly or Indirectly, Because of Race.*

The equal protection of the laws clause of the Fourteenth Amendment forbids denial of the right to vote on grounds of race or color, and the Fifteenth Amendment specifically forbids discrimination in the exercise of the franchise because of race or color. Moreover, the Constitution "nullifies sophisticated as well as simple minded modes of discrimination." *Lane* v. *Wilson,* 307 U. S. 268, 275 (1939). Most notable are the voting-rights cases, some based on the Fourteenth Amendment, *Nixon* v. *Herndon,* 273 U. S. 536 (1927) and *Nixon* v. *Condon,* 286 U. S. 73 (1932), and some on the Fifteenth Amendment, *Guinn* v. *United States,* 238 U. S. 347 (1915), *Lane* v. *Wilson,* 307 U. S. 268 (1939), *United States* v. *Classic,* 313 U. S. 299 (1941), *Smith* v. *Allwright,* 321 U. S. 649 (1944), and *Terry* v. *Adams,* 345 U. S. 461 (1953).

Other right-to-vote cases, raising related issues of discrimination, have also been grounded on the Fourteenth and Fifteenth Amendments. See, *e.g., Gomillion* v. *Lightfoot,* 364 U. S. 339 (1960) (legislative redrawing of municipal lines to exclude Negro voters violates Fifteenth Amendment); *Carrington* v. *Rash,* 380 U. S. 89 (1965) (limitation of right of resident members of armed forces to vote in state elections violates Fourteenth Amendment). See also *United States* v. *Mississippi,* 380 U. S. 128 (1965); *Louisiana* v. *United States,* 380 U. S. 145 (1965); *Harper* v. *Board of Elections,* 383 U. S. 663 (1966); *South Carolina* v. *Katzenbach,* 383 U. S. 301 (1966); and *Katzenbach* v. *Morgan,* 384 U. S. 641 (1966).

The present appeal presents an issue similar to that in *Gomillion, supra,* because here, as there, the state legisla-

ture has drawn electoral lines with the intent and effect of minimizing or canceling out the voting strength of its substantial Negro population. Here, as in *Gomillion,* the right to vote *somewhere* is not denied; but the right to cast an effective ballot is effectively eliminated.

> "The opposite conclusion, urged upon us by respondents, would sanction the achievement by a State of any impairment of voting rights whatever so long as it was cloaked in the garb of the realignment of political subdivisions. 'It is inconceivable that guarantees embedded in the Constitution of the United States may thus be manipulated out of existence . . .'" *Gomillion* v. *Lightfoot,* 364 U. S. 339 at 345.

Accordingly, appellants urge that the action of the Mississippi legislature, operating to deprive Negroes of the right to cast a meaningful ballot, denies appellants equal protection of the laws in violation of the Fourteenth Amendment and violates the Fifteenth Amendment as a denial or abridgment of the right to vote on grounds of race or color.

B. *Congressional Districts May Not Be Established in Racially Discriminatory Manner.*

Approaching the same problem from a different point of view, courts have, since *Wesberry* v. *Sanders,* 376 U. S. 1 (1964) and *Reynolds* v. *Sims,* 377 U. S. 533 (1964), scrutinized very carefully the consequences of particular district lines and the considerations which may have motivated legislatures in drawing them. Full equality of meaningful representation has been the basic standard, and, while considerations such as preservation of local political bound-

aries have been permitted to justify minor deviations from this standard, reasons of race are clearly excluded. Where reasons of race were found to have actually motivated the drawing of district lines, such lines have been set aside. *Sims* v. *Baggett,* 247 F. Supp. 96 (1965). This Court has on several occasions expressed its concern with the influence of racial factors in drawing of lines, but in each of the cases thus far presented to this Court, the issue was not appropriately drawn for decision on this point. See *Fortson* v. *Dorsey,* 379 U. S. 433 (1965) and *Burns* v. *Richardson,* 384 U. S. 73 (1966).

The first case, other than *Gomillion* v. *Lightfoot, supra,* that raised the issue at least tangentially was *Wright* v. *Rockefeller,* 376 U. S. 52 (1964), in which the majority of this Court accepted "the findings of the majority of the District Court that appellants failed to prove that the New York Legislature was either motivated by racial considerations or in fact drew the districts on racial lines." *Id.* at 56. There was, however, nothing in the majority opinion to suggest approval of racial gerrymandering. Indeed, both dissenting opinions by Justices Douglas and Goldberg specifically stated that racially motivated districting is unconstitutional, a proposition with which the majority expressed no disagreement and with which disagreement is scarcely possible. The difference, then, was only whether "the factual pattern of segregation . . . was sufficient to establish a prima facie case of unconstitutional racial districting." *Id.* at 74 (Mr. Justice Goldberg dissenting). The pattern of voting segregation in this case is much more vivid on the present record. Moreover, there are not in this case, as there were said to be in *Wright,* any "conflicting inferences" of legislative purpose which could be drawn from the evidence.

In more recent majority opinions this Court has noted that racially motivated action in legislative reapportionment or in congressional districting may be held to violate the Constitution upon an appropriate factual showing, but found the showing lacking. See *Fortson* v. *Dorsey, supra,* at 439 (1965), and *Burns* v. *Richardson, supra.*

In the latter case, the Court stated:

> "Speculations do not supply evidence that the multimember districting was designed to have or had the invidious effect necessary to a judgment of the unconstitutionality of the districting." *Id.* at 88-89.

Moreover, "the legislature did assign reasons for its choice." *Id.* at 89.

In the present instance, on the other hand, the Mississippi legislature, emerging from its unrecorded meetings, gave no reasons to support the districting adopted, and the state officials in the proceedings below suggested no reasons. No evidence was offered to explain the radically new lines utilized in this redistricting, and all other inferences were clearly negated on the record, except the inference of racial discrimination. Such inference is buttressed by examination of the lines drawn and confirmed by the affirmative evidence of intent offered.

In a strikingly similar context, a three-judge Federal Court in the same Circuit held:

> "The House plan adopted by the all-white Alabama Legislature was not conceived in a vacuum. If this court ignores the long history of racial discrimination in Alabama, it will prove that justice is both blind

and deaf. . . . With the pattern and practice of discrimination in Alabama as a backdrop, the cavalier treatment accorded predominantly Negro counties in the House plan takes on added meaning. The court is permitted to find the intent of the Legislature from the consistency of inherent probabilities inferred from the record as a whole. . . . The background and facts presented are substantially different from those appearing in the record, in *Wright* v. *Rockefeller,* 211 F. Supp. 460, aff'd 376 U. S. 52. . . . There nonwhites had long been given the vote and had historically been represented by nonwhites in the councils of state. Historic maps were introduced to show that the districts had always had erratic lines aggregating neighborhoods. . . . In the present case, we have a situation where nonwhites have long been denied the right to vote and historically have not been represented by nonwhites in the councils of state. . . . It would be unfortunate if Alabama's Negroes were to find, just as they were about to achieve the right to vote, that that right had been abridged by racial gerrymandering." *Sims* v. *Baggett. Id.* at 109.

This Court and other courts have had occasion to discuss the considerations which a legislature may legitimately take into account in reviewing the propriety of districts which deviate from strict population norms. The 1966 congressional districting act of the Mississippi legislature appears on its face substantially to meet the test of numerical equality; the population deviations from the mean of approximately 435,000 do not exceed 3 per cent, which would normally not seem excessive. However, other

plans (Appendices D and E, *infra,* pp. 41 and 42) were submitted which "do demonstrate that a closer approximation to equally populated districts was a feasible undertaking," *Swann* v. *Adams,* 35 U. S. L. Week 4101, 4103 (January 10, 1967); in these alternate plans the division of any county was also avoided, and at the same time they preserved the historical pattern of congressional districting in Mississippi much better, and conform more nearly to socio-economic-topographical patterns in the state. Most important of all, these alternate plans are altogether free of the racial gerrymander.

All the criteria of rational congressional districting could easily have been satisfied by the adoption of any one of several alternative plans. Indeed, it would not have been possible to devise a plan that satisfied all the legitimate criteria to any substantial extent without at the same time creating a congressional district with a substantial majority of Negroes of voting age, which was precisely what the Mississippi legislature was concerned to avoid. They therefore adopted a plan with less equal numerical districts; no explanation was offered for this by the state, and indeed none was available to it other than the frank acknowledgment of the importance of race.

C. *The Mississippi Legislature Has Adopted a Plan Involving Racial Gerrymandering, Which Should Be Set Aside.*

The gerrymander is essentially a device for constructing electoral units to the disadvantage of a disfavored group or to the advantage of a favored group, or for the accomplishment of both objectives at the same time. Now that malapportionment has been condemned and the integrity of the right to vote protected from all types of direct

attack, the gerrymander is the device currently most destructive of fairness in the electoral process. Malapportionment, racial restrictions on the franchise, and the gerrymander are all of the same family.

Appellants submit that the evidence clearly demonstrates that the intent, purpose and effect of the Mississippi legislature's plan is to gerrymander district boundaries so as to discriminate against Negroes.

Invalidity of the act can be established upon demonstration either that the Mississippi plan was racially motivated *or* that it "would *operate* to minimize or cancel out the voting strength of racial . . . elements of the voting population." (Emphasis supplied.) *Fortson* v. *Dorsey*, 379 U. S. 433, 439 (1965).

It has long been clear in other contexts that state action which effects racial disadvantage is suspect even though the discriminatory consequences are not shown to have been intended. *Johnson* v. *Virginia*, 373 U. S. 61, 62 (1963); *NAACP* v. *Alabama*, 357 U. S. 449, 461 (1958); *Eubanks* v. *Louisiana*, 356 U. S. 584, 587-88 (1958).

The same emphasis on effect independent of purpose and intent has been expressed in directly related voting cases. For instance, in *Rice* v. *Elmore*, 165 F. 2d 387, *cert. denied* 333 U. S. 875 (1947) at 392, the Fourth Circuit said:

"Their primary purpose [the 14th and 15th Amendments'] must not be lost sight of, however, and no election machinery can be upheld if its purpose *or effect* is to deny to the Negro on account of his race or color, any effective voice in the government of his country or the state or community wherein he lives." (Emphasis supplied.)

This language was cited with approval in *Terry* v. *Adams*, 345 U. S. 461 at 466 (1952):

> "The Court of Appeals in invalidating the South Carolina practice answered these formalistic arguments by holding that no election machinery could be sustained if its purpose *or underlying effect* was to deny Negroes on account of their race an effective voice in the governmental affairs of their country, state or community." (Emphasis supplied.)

This Court again said, in *Gomillion* v. *Lightfoot, supra,* at 341-342:

> "It is difficult to appreciate what stands in the way of adjudging a statute having this *inevitable effect* invalid in light of the principles by which this Court must judge . . ." (Emphasis supplied.)

And most recently in *Burns* v. *Richardson, supra,* at 88, this Court stated:

> "Where the requirements of *Reynolds* v. *Sims* are met, apportionment schemes, including multi-membered districts, will constitute an invidious discrimination only if it can be shown that *'designedly or otherwise* a multi-membered constituency apportionment scheme, under the circumstances of a particular case, would operate to minimize or cancel out the voting strength of racial or political elements of the voting population'." (Emphasis supplied.)

In any event, it is submitted that adequate proof, both of purpose *and* effect, has been supplied. That something unusual occurred in the drawing of Mississippi's district

lines in the present plan can be seen by a look at the First Congressional District in Appendix B, *infra,* p. 39: We have but to add hind legs and a tail to see a fattened version of Governor Gerry's original salamander. Drawing a line in an east-west direction all the way across the northern half of the state is directly contrary to the scheme of every congressional districting plan used by the state of Mississippi at least since 1894. Population reasons clearly do not demand it; much more equal districts are obtained by dividing all of the counties now in the First and Second Districts in a north-south direction, instead of an east-west direction. (Appendix E, *infra,* p. 42; a north-south division further would be consistent with all of the detailed evidence introduced as to Mississippi's history, topography, geography, economics, and traditions. Other plans, even more closely following historic precedents in Mississippi, were introduced by appellants in the District Court, and the difference in population between the largest and smallest district in appellants' Revised Delta Plan (Appendix D, *infra,* p. 41) is only 13,672 compared to a difference of 28,061 in the legislature's arbitrary and unusual plan. No evidence whatsoever was introduced by the state to justify the manner in which it acted.

The effect of the plan on the Negro vote was, according to the evidence introduced, a major factor in the legislature's decision. That effect is clear. While 1960 census total population figures permit an insignificant Negro majority in one district, voting age figures that take into account the actual situation in Mississippi clearly show a substantial white majority in every single District, despite the 43% Negro population of the state. The testimony of the appellants' witness, as well as the uncontradicted newspaper

stories introduced into evidence, affirmatively show the discriminatory intent of the Legislature in acting as it did. Further proof of direct intent than was introduced here was not available, and in all likelihood will not be available in any similar case that may ever be presented to the Court from a state with a history of discrimination as long as Mississippi's. As a Federal Court held in parallel circumstances in Alabama, justice would have to be both blind and deaf to ignore the inherent inferences to be drawn from such facts. *Sims* v. *Baggett, supra.* Members of the legislative bodies of states such as Mississippi read the opinions of this Court, even though perhaps with some reluctance, and they are aware that any public statement of legislative intent would doom automatically a plan such as they have here adopted.

D. *The Issues Here Involved Have Not Heretofore Been Squarely Presented to This Court, and Lower Court Differences on Subsidiary Questions Are Now Appropriate for Resolution.*

This Court has not heretofore had before it a case in which such facts were clearly presented, and the issues appropriately formulated for decision on this point. In a slightly different context, this Court has specifically reserved for future decision the basic questions presented here:

> "It might well be that, designedly or otherwise, a[n] . . . Apportionment scheme . . . would operate to minimize or cancel out the voting strength of racial or political elements of the voting population. When this is demonstrated it will be time enough to consider whether the system still passes constitutional muster." *Fortson* v. *Dorsey,* 379 U. S. 433 at 439.

A related question was likewise not reached or decided in *Swann* v. *Adams, supra,* and in *Burns* v. *Richardson, supra;* a similar question was discussed, but not decided because of the failure of proof, in *Wright* v. *Rockefeller,* 376 U. S. 52.

Lower federal courts and state courts have given conflicting treatment to evidence of racial discrimination presented in similar cases, and to the question, as yet unresolved by this Court, of the nature of the requisite proof of such allegations. *Sims* v. *Baggett, supra,* at 104-105; *Kilgarlin* v. *Martin,* 252 F. Supp. 404 (1966); *Meeks* v. *Avery,* 251 F. Supp. 245 (1966); *Bush* v. *Martin,* 251 F. Supp. 484 (1966) at 513; *Jones* v. *Falcey,* 48 N. J. 25, 222 A. 2d 101 (1966), 222 A. 2d 134 (1966); *Hainsworth* v. *Martin,* 386 S. W. 2d 202 (Civil Appeals, Texas, 1965), vacated as moot 382 U. S. 109 (1965), rehearing denied 382 U. S. 1002 (1966); and *Grills* v. *Branigin,* 255 F. Supp. 155 (1966), vacated and remanded *sub nom. Duddleston* v. *Grills,* 35 U. S. L. Week 3233 (January 10, 1967). It is appropriate that this Court now review and instruct lower federal and state courts on these points.

CONCLUSION

The obvious racially discriminatory intent, purpose and effect of House Bill 911, as adopted by the Mississippi legislature, is ironic testimony to the effectiveness of the voting equality decisions of this Court and of federal legislation designed to encourage registration among Negroes. Until the 1966 redistricting here challenged, the Mississippi legislature, with good reason, had never considered the possibility of a substantial Negro vote sufficiently likely to

call for alteration of established patterns of congressional districting; now, faced with such a possibility, it has chosen the racial gerrymander as the best means of preserving white supremacy in the future.

It would indeed be an unfortunate result if the long lines of decisions of this Court protecting the right of all citizens to vote and to fair representation in the Congress of the United States could now be evaded (especially as to appellants who belong to that class whose rights have been most impaired in the past) by the simple expedient of racial gerrymandering.

For the reasons stated, it is respectfully submitted that jurisdiction should be noted.

Respectfully submitted,

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January 20, 1967

APPENDICES

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APPENDIX A

Judgment of the District Court

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

Civil Action Number 3830

PEGGY J. CONNOR, *et al.*,

Plaintiffs,

—v.—

AUL B. JOHNSON, JR., GOVERNOR OF MISSISSIPPI, *et al.*,

Defendants.

FIRST FINAL JUDGMENT

THIS CAUSE having been submitted and considered by e Court on the claim presented by the complaint and endment thereto as to the constitutionality of the plan Congressional districts in Mississippi as ultimately de- ed by House Bill No. 911, Mississippi Laws 1966; and s Court having examined and considered the arguments contentions of the parties, has made its findings and clusions of even date herewith as a part hereof; and suant thereto doth now order, adjudge and decree:

) That House Bill No. 911, Mississippi Laws 1966 is l things valid and constitutional, and the present plans istricting the State of Mississippi for the election of bers to the lower house of Congress is approved and

adjudged in all things to be valid and proper; and that the claim of the plaintiffs attacking the validity thereof is without merit and is dismissed with prejudice at plaintiffs' cost, to be taxed under the rules of this Court. The per curiam opinion of the Court sufficiently states the findings and conclusions of the Court as to comply with the requirement of Civil Rule 52(a). There is no just reason for delay in rendering final judgment at this time on said claim of the plaintiffs as a part of the subject matter of this suit, and this final judgment thereasto shall now be entered as provided by

(2) The claim of the plaintiffs involving reapportionment of the Legislature of Mississippi has been referred by the Court to the Legislature for its proper action thereon during the fall of this year and it is contemplated and expected that a special session of the Legislature will be convened for that purpose within the near future; and the Court will reserve consideration of that question to await receipt of the work of the special session of the Legislature thereon and full jurisdiction of the parties and the subject matter is reserved and retained by the Court for that purpose.

ORDERED, ADJUDGED AND DECREED, this September 28th, A. D., 1966.

/s/ JAMES P. COLEMAN
United States Circuit Judge

/s/ HAROLD COX
United States District Judge

/s/ DAN M. RUSSELL
United States District Judge

Opinion of the District Court

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

Civil Action Number 3830

PEGGY J. CONNOR, *et al.*,

Plaintiffs,

—v.—

PAUL B. JOHNSON, *et al.*,

Defendants.

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efore JAMES P. COLEMAN, *Circuit Judge;* WILLIAM OLD COX, *District Judge;* and DAN M. RUSSELL, *District ge.*

CURIAM:

I.

a result of the decennial census of 1960 and pursuant e Act of Congress of June 18, 1929, 46 Stat. 21-27, ended by the Act of November 15, 1941, 55 Stat. 761, .C.A., Section 2a, the number of Representatives in ess to which the State of Mississippi is entitled was d from six to five. For Mississippi this was the reduction in thirty years. Forty years ago, Mississad 8 Representatives in Congress, Florida had 4, alifornia had 13. Mississippi now has five, Florida California 38.

The first loss followed the census of 1930. In 1932, after long and acrimonious battle, it appeared that the Legislature would never agree on any redistricting plan and that the seven Representatives would have to be elected from the State at Large. Many candidates began their statewide campaigns. At the last minute, the matter was settled by combining the Seventh and Eighth Districts, eliminating Representative James W. Collier, of Vicksburg, from Congress, just as he was about to become Chairman of the Committee on Ways and Means. Even so, the controversy was carried to the Supreme Court in *Wood* v. *Broom,* 287 U. S. 1, 53 S. Ct. 1, 77 L. Ed. 131, but the new districts were not disturbed.

Following the census of 1950, Mississippi lost another Representative. After the same reluctance and inability to agree that had existed in 1932, the Legislature ultimately resolved the matter by combining the First and Fourth Districts. This ended the Congressional career of Representative John E. Rankin.

Upon the third loss, the problem of redistricting kept the Legislature in an uproar for the major portion of its 1962 regular session. Eventually, the Second and Third Districts were combined. This resulted in the elimination of Representative Frank E. Smith from the Congress. It was this 1962 Congressional Reapportionment which was changed in 1966 by House Bill 911, now under attack. It will be borne in mind that House Bill 911 was, in effect, the direct result of the suit now *sub judice.*

II.

On October 19, 1965, the Mississippi Freedom Democratic Party, an organization composed almost entirely of Negroes, joined by other Plaintiffs, instituted this action for reapportionment of the Five Congressional Districts within the State of Mississippi. It was charged, and admitted, that in 1965 the population of the respective Districts was as follows:

First District (old first and fourth), 364,962.
Second District (old second and third), 608,041.
Third District (old seventh and eighth), 460,100.
Fourth District, 295,072.
Fifth District, 449,565.

The complaint particularly charged that *"Each of the Congressional Districts should contain 435,628 persons, to be apportioned on a strict population basis"*.

Before this Court was assembled to hear the matter, the Legislature enacted, and on April 7, 1966, the Acting Governor approved, House Bill No. 911, Laws of Mississippi of 1966, reapportioning the five Congressional Districts. This was not accomplished, however, until after the Legislative histories of 1932, 1952, and 1962 had, in large measure, repeated themselves.

As recast by House Bill No. 911, the five districts will hereafter contain the following population as of the 1960 census:

First District, 15 counties,	449,361.
Second District, 20 counties,	427,468.
Third District, 12 counties,	428,447.
Fourth District, 19 counties,	423,300.
Fifth District, 16 counties,	449,565.
82	2,178,141

It will thus be seen that the population ratio between the largest district and the smallest district is 1.062 to 1. The heaviest variation from the population norm of 435,628 (the figure demanded by Plaintiffs) is only 3.20% above in the Fifth District. This District is surrounded on three sides by the Alabama boundary, the Gulf of Mexico, and the Louisiana boundary, leaving very little maneuvering room in which to meet the norm with perfect mathematical exactness. The extremely low variation in the remaining four districts is as follows:

First District, 3.15% above the norm;
Second District, 1.87% below the norm;
Third District, 1.65% below the norm;
Fourth District, 2.83% below the norm.

Although Plaintiffs had originally demanded that the State be redivided into five districts of 435,628 people each, and although the Legislature had almost achieved that objective to absolute perfection, Plaintiffs were not satisfied with House Bill No. 911. On July 12, 1966, they filed an amendment to the complaint, in which they attacked the

statute on various grounds. The one most vigorously pressed is that the intent, purpose and necessary effect of the new plan will further be, in all likelihood, to deny the Mississippi Freedom Democratic Party and its Members and candidates a fair opportunity to vote and to elect [Negro] candidates to the United States House of Representatives from Mississippi. This contention was paraphrased in the further contention that the new Congressional lines in all likelihood, will delete and leave without meaningful representation a significant segment of the population, including the Plaintiffs and the class which they represent, meaning Negro citizens of the State. The defendants denied these new allegations.

The Court has heard the matter on its merits.[1]

The chief witness for the Plaintiffs was the Secretary of the Mississippi Freedom Democratic Party. His testimony was to the effect that the Plaintiffs feel that they are entitled to have at least one Congressional District of sufficient preponderance in Negro population to ensure the election of a Negro Representative from Mississippi.

By leave of the Court, both sides have filed briefs in support of their respective contentions.

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[1] While the sole question before the Court was whether House Bill 911 of the Laws of Mississippi of 1966, as far as practicable, apportioned the State into Congressional Districts of equal population in compliance with *Wesberry* v. *Sanders,* there were numerous objections raised by both sides as to the admission of certain items of evidence. Since we are here solely concerned with a Constitutional question of highest importance, rather than to have this opinion transformed into an exposition on the rules of evidence, we have decided to overrule all evidentiary objections and to admit all the evidence offered by either side, to receive such weight and consideration as its credibility, materiality, competency, and relevancy may justify, proceeding then to a determination of whether House Bill 911 does, or does not, comply with the Constitution of the United States.

In their brief, Plaintiffs make the following contentions, which we shall number as points for convenience of further reference.

(1) To be representative of the racial composition of the entire state, a Mississippi Congressional Delegation of five members would include two Negroes. The net effect of House Bill 911 is virtually to ensure that there will be no Negro Congressman from Mississippi for the next ten years;

(2) The Delta region of Mississippi contains eighteen counties, each of which has a population of more than fifty per cent Negro. It is a highly developed agricultural region. For these reasons it should have been included in a separate Congressional District;

(3) Only 32% of the eligible Negroes in Mississippi have registered as compared to twice that percentage of the white eligibles;

(4) The Legislature enacted House Bill No. 911 with the deliberate purpose of discriminating against the Negro population of the State;

(5) That the new Congressional Districts are not adequately co-extensive with the several geological and geographical regions of the State; and

(6) That House Bill No. 911 was, in fact, a racial gerrymander of the type and kind condemned in *Gomillion* v. *Lightfoot,* 364 U. S. 339, 81 S. Ct. 125, 5 L. Ed. 2d 110 (1960).

III

We are of the view that the adjudication of this controversy is controlled by *Wesberry* v. *Sanders,* 376 U. S. 1, 84 S. Ct. 526, 11 L. Ed. 2d 481:

376 U. S. at Pages 7, 8.

"We hold that, construed in its historical context, the command of Art. I, Sec. 2, that Representatives be chosen 'by the People of the several States' means that as nearly as is practicable one man's vote in a congressional election is to be worth as much as another's."

376 U. S. at Page 14.

"It would defeat the principle solemnly embodied in the Great Compromise—equal representation in the House for equal numbers of people—for us to hold that, within the States, legislatures may draw the lines of congressional districts in such a way as to give some voters a greater voice in choosing a Congressman than others."

376 U. S. at Page 17.

"All elections ought to be equal. Elections are equal, when a given number of citizens, in one part of the state, choose as many representatives, as are chosen by the same number of citizens, in any other part of the state. In this manner, the proportion of the representatives and of the constituents will remain invariably the same."

376 U. S. at Page 18.

"While it may not be possible to draw congressional districts with mathematical precision, that is no excuse

for ignoring our Constitution's plain objective of making equal representation for equal numbers of people the fundamental goal for the House of Representatives. That is the high standard of justice and common sense which the Founders set for us."

It has thrice been held by three judge district courts, applying *Wesberry,* that one factor, and only one, may be taken into account in apportioning and establishing Congressional districts among the people of a state *and that factor is population. Calkins* v. *Hare,* 282 F. Supp. at Page 824, *Meeks* v. *Anderson,* 229 F. Supp. at Page 278, and *Bush* v. *Martin,* 224 F. Supp. at Page 511, affirmed, sub nom. *Martin* v. *Bush,* 376 U. S. 222, 84 S. Ct. 709, —— L. Ed. 2d —— (1964).

Although it was a state legislative reapportionment case, *Reynolds* v. *Sims,* 208 F. Supp. 431, affirmed 377 U. S. 533, 84 S. Ct. 1362, 12 L. Ed. 2d 506, gives further guidance. The Supreme Court said:

377 U. S. at Page 559.

"We determine that the constitutional test for the validity of congressional districting schemes was one of substantial equality of population among the various districts established by a state legislature for the election of members of the Federal House of Representatives."

In *Reynolds,* the Supreme Court further said:

"Citizens, not history or economic interests, cast votes. Considerations of area alone provide an insuffi-

cient justification for deviations from the equal population principle. Again, people not land or trees or pastures, vote."

House Bill No. 911, the product of numerous plans in both Houses of the Legislature, hammered out after a deadlock between the two, complies with the Constitution of the United States and constitutes a valid reapportionment of the five Congressional Districts within the State of Mississippi. We so find as a matter of fact and we so hold as a matter of law.

IV

In order that the Record may be complete and that there may be no doubt that the contentions of the Plaintiffs have thoroughly been considered, we make the following additional findings and comment on the points raised in Plaintiff's brief:

As to Point 1, suggesting that the Congressional Districts should have been so arranged as to ensure the election of at least two Negro Members of Congress, we have only to point to the unanswerable logic of what Mr. Justice Douglas said (dissenting opinion) on this subject in *Wright* v. *Rockefeller,* 376 U. S. 52, 84 S. Ct. 603, 11 L. Ed. 2d 512, reh. den. 376 U. S. 959, 84 S. Ct. 964, 11 L. Ed. 2d 977.

Wesberry and *Reynolds,* supra, in language already quoted, dispose of Point 2.

As to Point 3, we refer the parties to what Judge Wisdom said in *Mississippi Freedom Democratic Party* v. *Democratic Party of Mississippi,* 362 F. 2d 60, June 6, 1966.

As to Point 4, we find that Plaintiffs wholly failed their burden of proof. They proved that there were newspaper

reports as to what a few legislators "thought" or said, but the solemn acts of the Congress or of State legislatures may not be impeached or invalidated on nothing more than newspaper reports. Cf. *Wright* v. *Rockefeller,* supra.

The negative answer to Point 5 may be found in *Wood* v. *Broom,* supra, as well as in the Acts of Congress of June 18, 1929 and November 15, 1941, 46 Stat. 21-27, 55 Stat. 761, 2 U. S. C. A., Section 2a.

As to Point 6, *Gomillion* condemned an effort to take all but four or five of 400 Negro voters out of a municipality while not removing a single white voter, the objective to be accomplished by altering a square shaped city to one having 28 sides, *Gomillion* v. *Lightfoot,* 364 U. S. 339, 81 S. Ct. 125, 5 L. Ed. 2d 110 (1960). There are no such facts in this case. In other words, *Gomillion* is simply not opposite.

Reapportioning Mississippi into Congressional Districts being the difficult, almost impossible, task that it is, one may well recognize that the Legislature would have much preferred to forget the whole subject—in fact, would have done so had it not been for the compulsion of this suit. Under the law, requiring that the vote of one person shall have substantially the same weight as that of any other in the selection of any particular official or in the decision of any particular elective issue, the Plaintiffs had every right to institute this suit. When the suit was filed the Second District had a population of 608,441. Obviously it would have to give up 172,813 people. The Second District had 360,780 Negroes and 247,661 white residents, a Negro majority of 113,119. The record is silent as to why the Members of the Mississippi Freedom Democrat Party wanted to attack this District. It presented a perfect set up

for their aims and aspirations. They must have known that there was no place to send the 172,813 surplus but to the adjoining First and Fourth Districts. The Third and Fifth Districts already had more than their quota of population. So, the Legislature did what these Plaintiffs in effect forced it to do—it distributed the surplus to the two districts which needed it in order to strike the balance of equality. When this was done the old First District, of predominantly white population from the foundation of the State, wound up with a majority of Negro inhabitants, although small compared to that which formerly existed in the Second District.

The point is, however, that the balance in population among the five districts is as nearly perfect as 174 Legislators could ever be expected to agree upon as a distribution among 82 counties and the vote of every citizen, of whatever race, will now weigh equally in the selection of Representatives in Congress.

The Court therefore finds and holds that as to the Reapportionment of the State of Mississippi for the election of Representatives in Congress the complaint should be and is dismissed at the cost of the Plaintiffs.

We have not overlooked the final contention that the Congressional Reapportionment is invalid because made by a Legislature which is invalidly apportioned. The Act was passed by the Regular 1966 Session of the Legislature elected in 1963 pursuant to laws then in effect and unchallenged. We are, therefore, not in position to entertain this particular attack.

There is another wing to this case, involving Reapportionment of the Legislature, in which the Legislature has

been directed to reapportion. That aspect is yet pending awaiting legislative response.

As to Congressional Reapportionment, the Judgment of the Court is now final.

That which has herein appeared shall constitute the findings of fact and conclusions of law in this case, and an order accordingly will be prepared and entered by the Court.

This September , 1966.

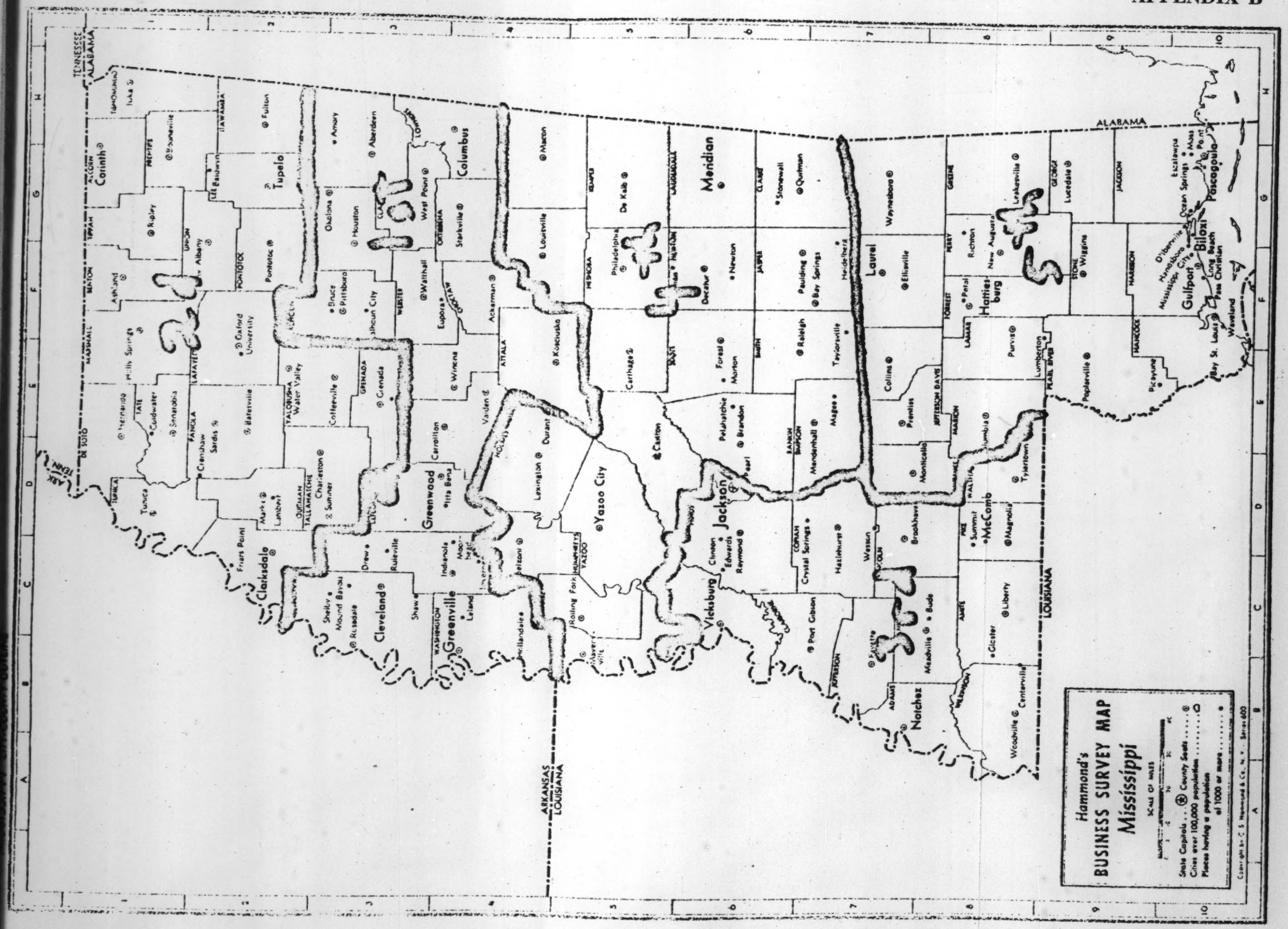
/s/ James P. Coleman
United States Circuit Judge

/s/ William Harold Cox
United States District Judge

/s/ Dan M. Russell
United States District Judge

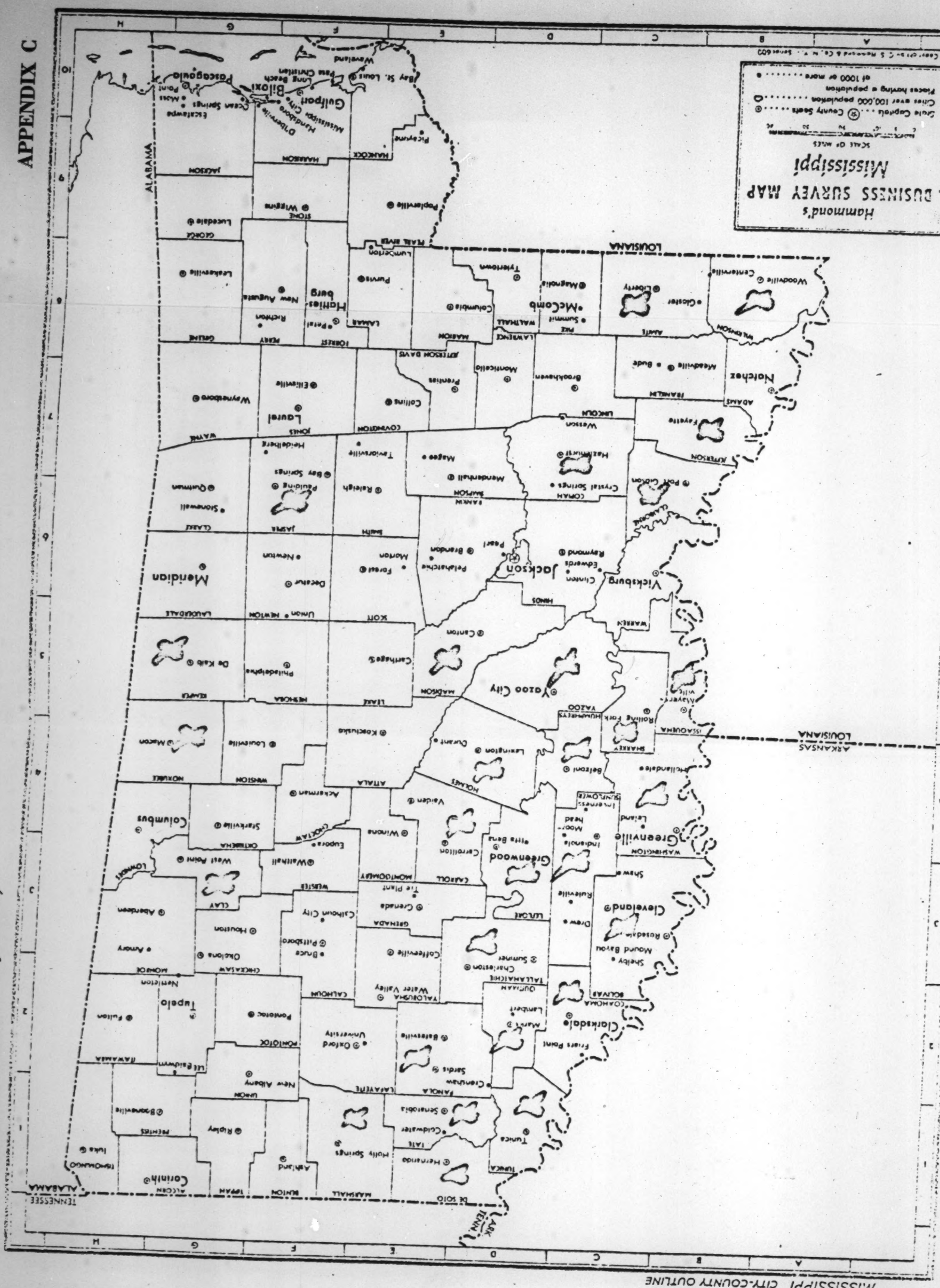
APPENDIX B

(Map Showing District Lines Adopted by Mississippi Legislature)



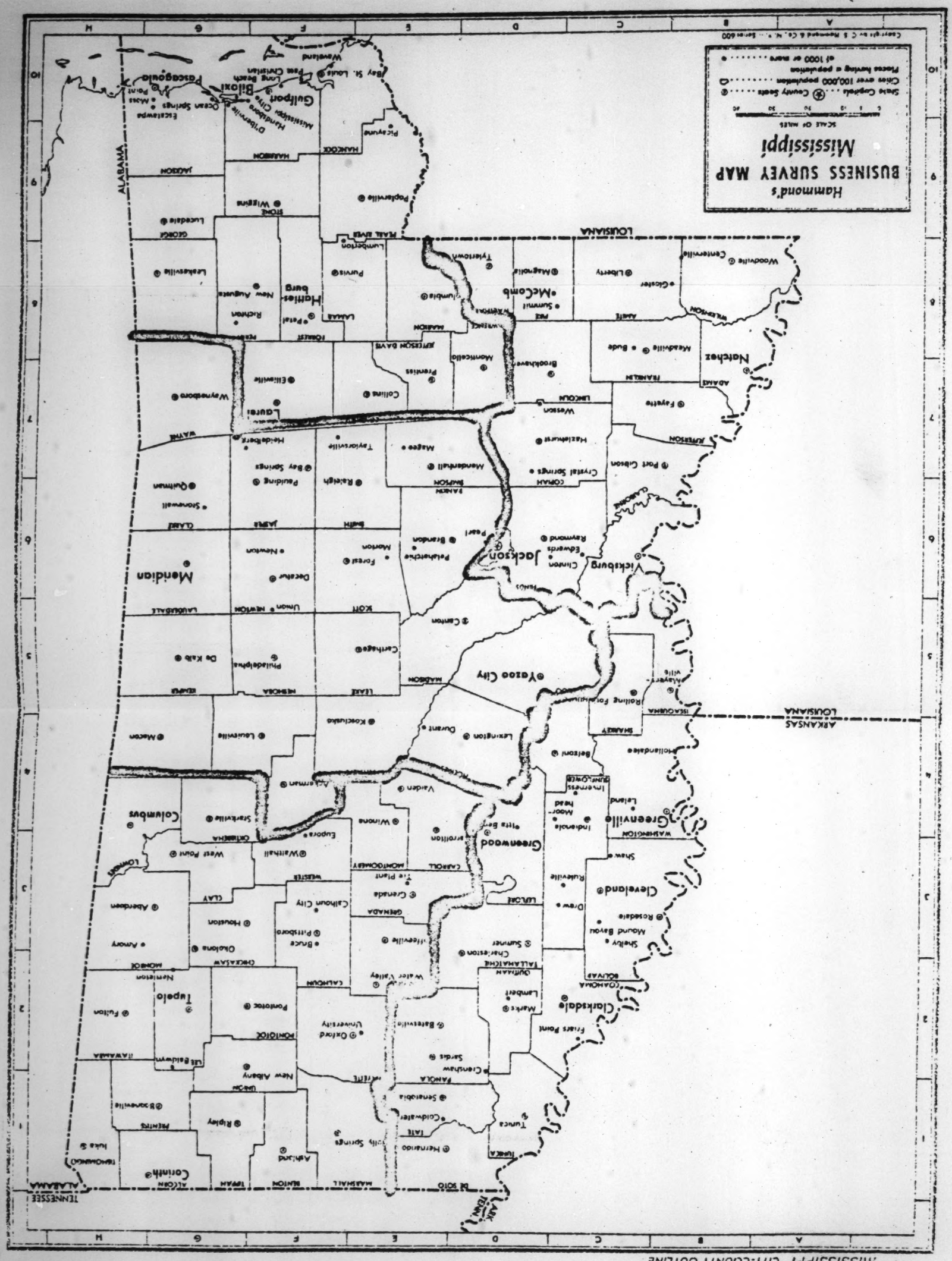
APPENDIX C

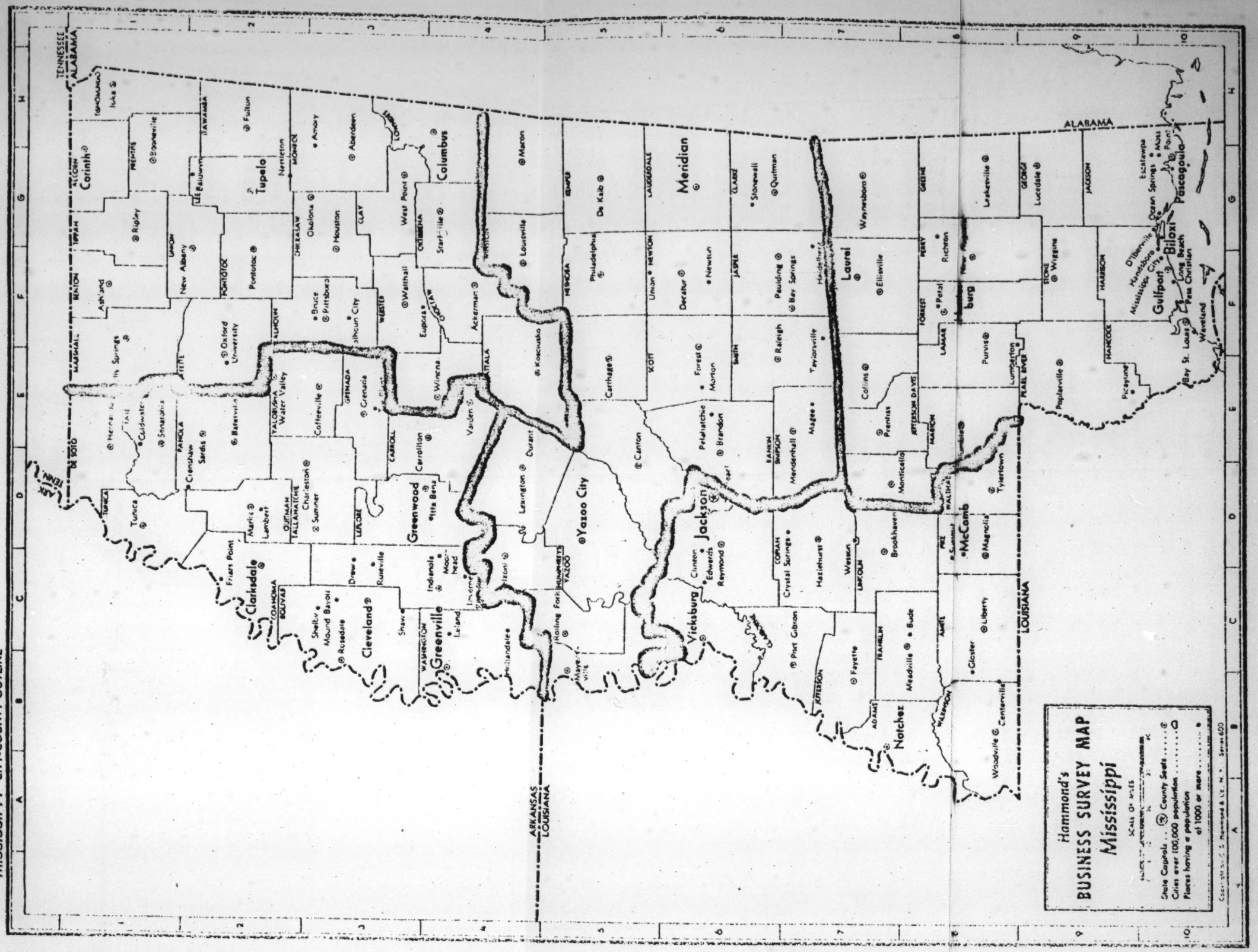
(Map Showing Counties With Total Negro Population Majorities)


Hammond's
BUSINESS SURVEY MAP
Mississippi
SCALE OF MILES
Seat of County
Cities over 100,000 population
Places having a population of 1000 or more
Copr. 1951 by C. S. Hammond & Co., N. Y. Serial 603
MISSISSIPPI CITY-COUNTY OUTLINE
ALABAMA
LOUISIANA
ARKANSAS
TENNESSEE
Meridian
Vicksburg
Jackson
Natchez
Laurel
Hattiesburg
McComb
Gulfport
Biloxi
Pascagoula
Greenville
Greenwood
Clarksdale
Tupelo
Corinth
Columbus
Yazoo City
Cleveland
WARREN
HINDS
RANKIN
SCOTT
NEWTON
LAUDERDALE
KEMPER
NESHOBA
LEAKE
MADISON
YAZOO
HUMPHREYS
SHARKEY
ISSAQUENA
WASHINGTON
BOLIVAR
COAHOMA
TALLAHATCHIE
QUITMAN
LAFAYETTE
PANOLA
TATE
TUNICA
DE SOTO
MARSHALL
BENTON
TIPPAH
ALCORN
TISHOMINGO
PRENTISS
ITAWAMBA
LEE
CHICKASAW
MONROE
CLAY
OKTIBBEHA
LOWNDES
WEBSTER
CALHOUN
GRENADA
MONTGOMERY
CARROLL
HOLMES
ATTALA
LEFLORE
SUNFLOWER
HUMPHREYS
SHARKEY
ISSAQUENA
WARREN
YAZOO
MADISON
HINDS
RANKIN
SCOTT
NEWTON
LAUDERDALE
KEMPER
NESHOBA
LEAKE
WINSTON
NOXUBEE
KEMPER
NESHOBA
LEAKE
SCOTT
NEWTON
LAUDERDALE
CLARKE
JASPER
SMITH
JONES
COVINGTON
LAWRENCE
FRANKLIN
LINCOLN
PIKE
WALTHALL
MARION
PEARL RIVER
STONE
GEORGE
JACKSON
HARRISON
PEARL RIVER
STONE
GEORGE
JACKSON
HARRISON
WILKINSON
AMITE
WASHINGTON
ADAMS
FRANKLIN
LINCOLN
LAWRENCE
JEFFERSON DAVIS
LAMAR
PERRY
GREENE
WAYNE
CLARKE
JASPER
SMITH
JONES
COVINGTON
LAWRENCE
FRANKLIN
LINCOLN
PIKE
WALTHALL
MARION
PEARL RIVER
STONE
GEORGE
JACKSON
HARRISON
WILKINSON
AMITE
WASHINGTON
ADAMS
FRANKLIN
LINCOLN
LAWRENCE
JEFFERSON DAVIS
LAMAR
PERRY
GREENE
WAYNE
Bay St. Louis
Pass Christian
Long Beach
Gulfport
Biloxi
Ocean Springs
Escatawpa
Point Cadet
Pascagoula
Moss Point
Waveland
Hancock
Pearlington
Picayune
Poplarville
Wiggins
Lucedale
Leakesville
New Augusta
Purvis
Lumberton
Hattiesburg
Petal
Richton
Columbia
Tylertown
Magnolia
Summit
McComb
Liberty
Gloster
Centerville
Woodville
Meadville
Bude
Natchez
Fayette
Brookhaven
Monticello
Prentiss
Collins
Ellisville
Laurel
Heidelberg
Bay Springs
Quitman
Sionnewall
Paulding
Raleigh
Taylorsville
Magee
Mendenhall
Crystal Springs
Hazlehurst
Port Gibson
Raymond
Clinton
Edwards
Pearl
Pelahatchie
Brandon
Forest
Morton
Newton
Decatur
Meridian
Vicksburg
Canton
Carthage
Philadelphia
De Kalb
Kosciusko
Louisville
Macon
Starkville
Columbus
Ackerman
Eupora
Winona
Valden
Lexington
Durant
Belzoni
Rolling Fork
Indianola
Moorehead
Inverness
Leland
Greenville
Shaw
Cleveland
Rosedale
Mound Bayou
Shelby
Drew
Ruleville
Greenwood
Itta Bena
Carrollton
Grenada
Coffeeville
Charleston
Sumner
Clarksdale
Lambert
Marks
Friars Point
Batesville
Oxford
University
Senatobia
Coldwater
Tunica
Hernando
Holly Springs
Ashland
Rienzi
Corinth
Iuka
Booneville
Ripley
New Albany
Union
Pontotoc
Fulton
Tupelo
Houston
Okolona
Amory
Aberdeen
West Point
Walthall
Winona
Carrollton
Tie Plant
Grenada
Calhoun City
Pittsboro
Bruce
Coffeeville
Charleston
Sumner
Valley Water
Oxford
University
Batesville
Sardis
Clarkdale
Lambert
Marks
Friars Point
Cleveland
Drew
Ruleville
Shaw
Greenville
Leland
Indianola
Belzoni
Rolling Fork
Yazoo City
Vicksburg
Clinton
Edwards
Raymond
Pearl
Brandon
Pelahatchie
Morton
Forest

APPENDIX D

(Map Showing Revised Delta Plan)




MISSISSIPPI CITY-COUNTY OUTLINE
TENNESSEE
ALABAMA
Corinth
Tupelo
Columbus
Meridian
Laurel
Gulfport
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Pascagoula
Clarksdale
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Yazoo City
Jackson
Vicksburg
Natchez
McComb
ARKANSAS
LOUISIANA
Hammond's
BUSINESS SURVEY MAP
Mississippi
State Capitals ... Ⓢ County Seats ..... ⓒ
Cities over 100,000 population ..... ◻
Places having a population of 1000 or more ..... •

THE AMOUNT OF THE WHITE OR NON-WHITE MAJORITY IN THE DISTRICT WITH THE HIGHEST PERCENTAGE OF NON-WHITES**

SENATE PLANS:			
Introduced Died in Senate Committee	February 1, 1966	FOSTER PLAN (S.B. 1754)	82,204 nonwhite majority
Passed by Senate	February 15, 1966	ALEXANDER PLAN (S.B. 1739)	40,526 nonwhite majority
Passed by Senate	April 7, 1966	SENATE PLAN OF APRIL 7, 1966 (Amendment No. 2 to H.B. 911)	14,229 nonwhite majority
HOUSE PLANS:			
Passed by House	January 13, 1966	WILLIAMS PLAN (H.B. 63)	15,852 white majority
Passed by	April 6, 1966	HOUSE PLAN OF APRIL 6, 1966 (Amendment No. 1 to H.B. 911)	3,116 white majority
ADOPTED PLAN:			
Passed by Both Houses Signed by Acting Governor	April 7, 1966		1,819 nonwhite majority

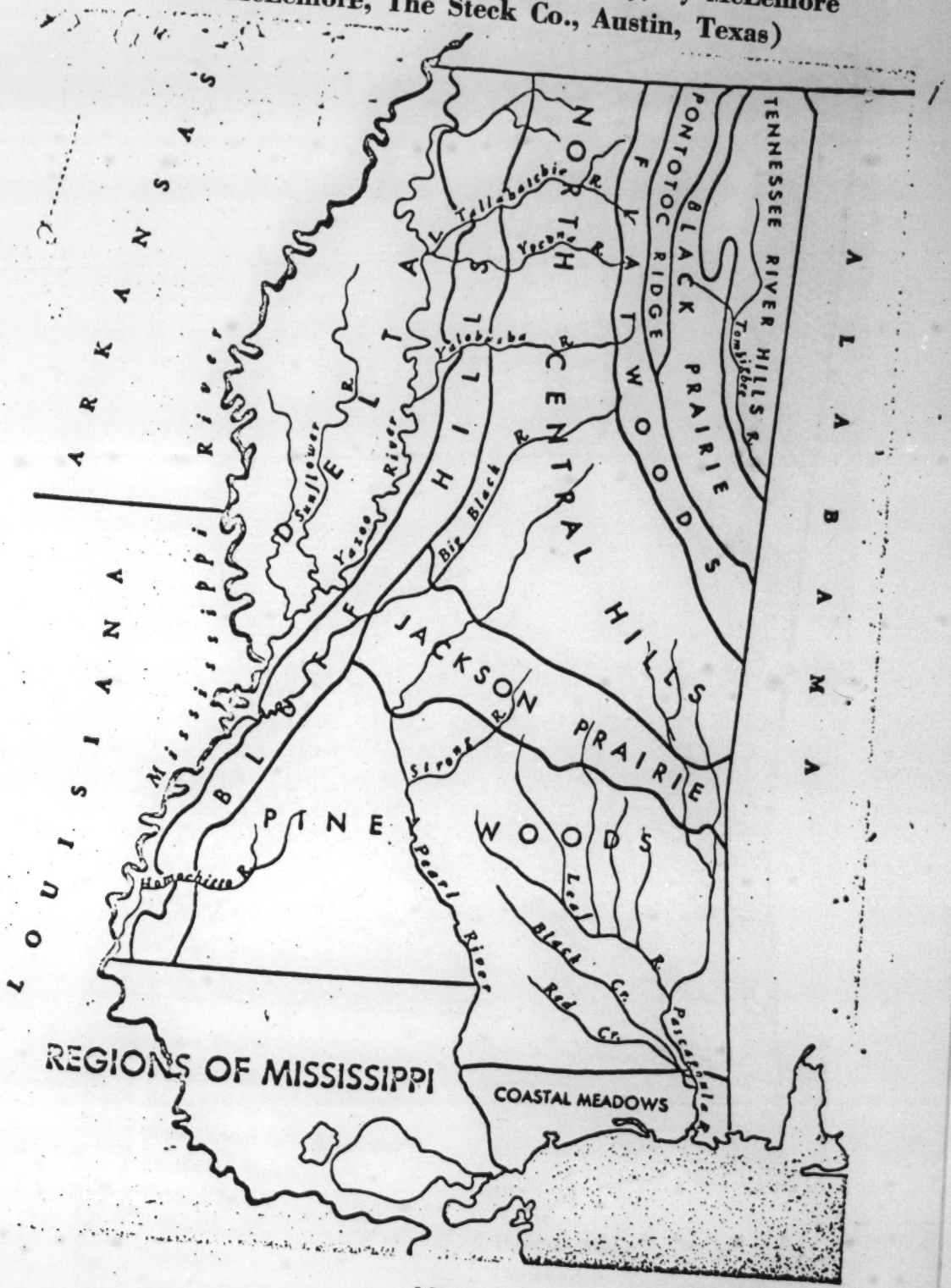
**

1. All figures are based on the statistics published in the Jackson Clarion Ledger, April 8, 1966 Edition.
2. The plans included are all plans for which maps were published in the Jackson newspapers.
3. The plans that have a district with a nonwhite majority have only one district with a nonwhite majority.

Method Used In Compilation:
The statistics published in the Jackson Clarion Ledger, April 8, 1966 edition include total white and total nonwhite population for each district. The majority reported in the above chart is the difference between the two statistics.

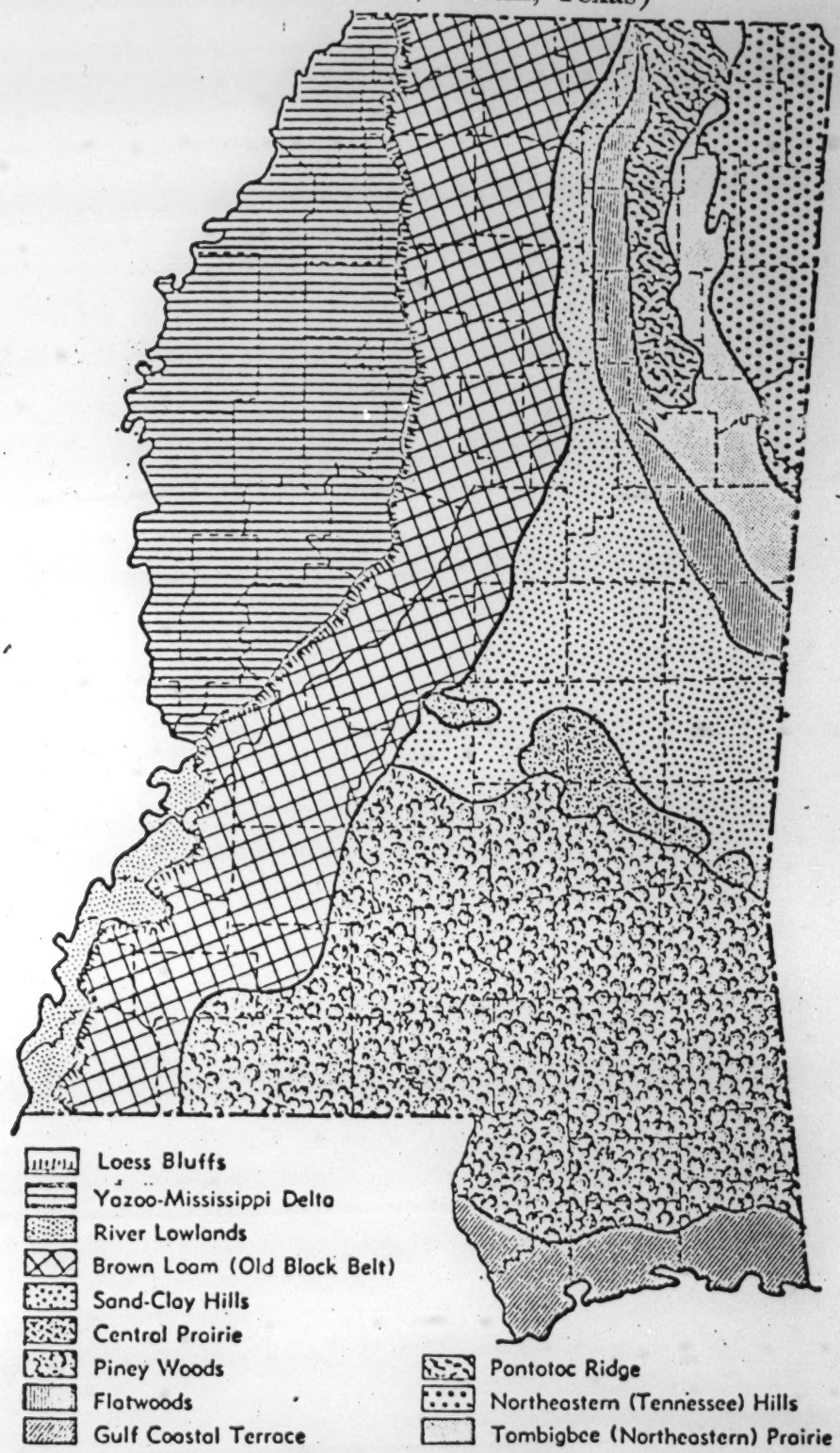
APPENDIX G

(Map taken from *The Mississippi Story*, by McLemore and McLemore, The Steck Co., Austin, Texas)



APPENDIX H

(Map taken from *Mississippi: A History*, by John K. Bettersworth, The Steck Co., Austin, Texas)



MISSISSIPPI SOIL AREAS

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 999

PEGGY J. CONNOR, *et al.*,

Appellants,

—v.—

PAUL B. JOHNSON, JR., Governor of Mississippi, *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

APPELLANTS' BRIEF OPPOSING THE MOTION TO DISMISS

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Of Counsel

INDEX

PAGE

BRIEF OPPOSING THE MOTION TO DISMISS:

Jurisdiction 1

Record Filed by Appellants Is Complete 2

APPENDIX—Affidavit 5

TABLE OF AUTHORITIES

Cases:

Brown v. Board of Education, 347 U. S. 483, 98 L. Ed. 873, 74 S. Ct. 686 2

Gomillion v. Lightfoot, 364 U. S. 339, 5 L. Ed. 2nd 110, 113, 81 S. Ct. 125 2

Lane v. Wilson, 307 U. S. 268, 83 L. Ed. 1281, 1287, 59 S. Ct. 872 2

Wright v. Rockefeller, 376 U. S. 52, 68, 11 L. Ed. 2nd 512, 523, 84 S. Ct. 603 2

United States Constitution:

Article I 2

Fourteenth Amendment 2

Fifteenth Amendment 2

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 999

PEGGY J. CONNOR, ANNE E. TAYLOR, AUGUSTA WHEADON, RALTHUS HAYES, CATHERINE CROWELL, HENRY J. KIRKSEY, ELIJAH CONWELL, JR., ALMA CARNEGIE for themselves and others similarly situated, and THE MISSISSIPPI FREEDOM DEMOCRATIC PARTY,

Appellants,

—v.—

PAUL B. JOHNSON, Governor of Mississippi, JOE PATTERSON, Attorney-General of Mississippi, HEBER LADNER, the Secretary of State of Mississippi, WALTER SILLERS, the Speaker of the Mississippi House of Representatives, GEORGE YARBROUGH, the President Pro Tempore of the Mississippi Senate,

Appellees.

APPELLANTS' BRIEF OPPOSING THE MOTION TO DISMISS

Jurisdiction

Appellees apparently contend in their Motion to Dismiss that the exclusive source of jurisdiction over any question whatsoever involving congressional reapportionment lies in

Article I, Section 2 of the United States Constitution. Whether or not this be so in matters dealing only with strict numerical malapportionment, it is clearly not so where discrimination based on race is alleged. In such situations, the Fourteenth and Fifteenth Amendments to the Constitution are the appropriate basis for jurisdiction. See *Gomillion* v. *Lightfoot,* 364 U. S. 339, 342, 5 L. Ed. 2nd 110, 113, 81 S. Ct. 125; *Lane* v. *Wilson,* 307 U. S. 268, 275, 83 L. Ed. 1281, 1287, 59 S. Ct. 872; *Wright* v. *Rockefeller* (dissent), 376 U. S. 52, 68, 11 L. Ed. 2nd 512, 523, 84 S. Ct. 603; *Brown* v. *Board of Education,* 347 U. S. 483, 98 L. Ed. 873, 74 S. Ct. 686.

The Record Filed by Appellants Is Complete

The Appellees point out that the record sent by the Court below to this Court did not include a transcript of the testimony at the trial itself, and in their brief they imply that such failure was deliberate. Quite to the contrary, the Appellants' Notice of Appeal designated *all* of the record, exclusive of briefs of counsel, and anticipated that under Supreme Court Rule 12(2) such entire record would be prepared for transmission to this Court; it was only through inadvertence or misunderstanding, as set forth in the affidavit hereto attached as an Appendix, that the transcript was not filed earlier. All exhibits, deposi-

tions, etc., were filed at the time of docketing the case, and such transcript is now on file before this Court.

Respectfully submitted this 10th day of March, 1967.

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Waterbury, Connecticut

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WILLIAM M. KUNSTLER
BENJAMIN E. SMITH
MORTON I. STAVIS
Of Counsel

APPENDIX

APPENDIX

APPENDIX

Affidavit

STATE OF MISSISSIPPI,
COUNTY OF HINDS.

ALVIN J. BRONSTEIN, being duly sworn, deposes and says:

1. That he is an attorney, duly admitted to the Bar of the Supreme Court of the United States, and one of the attorneys of record for the appellants herein;

2. That he is making this affidavit in support of appellants' brief in opposition to appellees' motion to dismiss;

3. That the transcript of the testimony and proceedings before the Court below was not filed with the Clerk of the Court below and transmitted to this Court with the rest of the record due to an inadvertence and misunderstanding in that this affiant believed that one of the other attorneys of record had ordered the transcript;

4. That on or about November 29, 1966, this affiant had a conversation with the Chief Deputy Clerk of the Court below, Mrs. Elizabeth Mathison, who advised this affiant, that we would have to obtain duplicate copies of all the exhibits and other papers in the file of the court below, since the court below had a rule about not releasing its original papers. On December 3, 1966, this affiant received a letter dated November 30, 1966 from Mrs. Mathison, the Chief Deputy Clerk of the court below, in which she enclosed a list of the exhibits and which letter stated:

"As soon as you are able to furnish us with duplications of these exhibits we will then forward the *record* to the Supreme Court." (Emphasis supplied.)

5. That on December 6, 1966 this affiant received a copy of a letter dated December 5, 1966 from Mrs. Mathison to John F. Davis, Clerk of this Court, which letter stated:

"Enclosed are the original *papers* and *certified copies of the above case* on appeal. The exhibits in this case will follow * * * " (Emphasis supplied.)

6. These letters and the use of the term *record* led this affiant to believe that the transcript had been ordered from the court reporter and forwarded to this Court, and the first notice that this affiant had that this was not the fact was when he received Appellees' Motion to Dismiss or Affirm.

/s/ Alvin J. Bronstein

Subscribed and sworn to before me
this 7th day of March, 1967.

/s/ Sarah Harvey Stevens
Notary Public
My Commission expires:
May 9, 1970

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

PEGGY J. CONNOR, ET AL
PLAINTIFFS
VS.
PAUL B. JOHNSON, ET AL
DEFENDANTS,

CIVIL NO. 3830

REPLY BRIEF OF PLAINTIFFS

The Defendants have raised in their Brief no issues not squarely presented to this Court in the Plaintiffs' Amendment to their Complaint of December 16, 1966 and their Brief of like date. The figures submitted by the Defendants strengthen rather than weaken the Plaintiffs' argument that constitutional standards of equality have not been met; specifically they indicate that not only do sixteen (16) of the forty-one (41) senatorial districts deviate from the population norm by fifteen per cent (15%), but five (5) of these deviate by more than twenty (20%) per cent, and three (3) by more than twenty-five per cent (25%). Likewise, such figures show that not only do twenty-four (24) of the districts for the House of Representatives deviate from the population norm by fifteen per cent (15%), fourteen (14) deviate by more than twenty per cent (20%) and seven (7) deviate by more than twenty-five (25%).

In response to the Plaintiffs' contentions as to the existence of racial gerrymandering, the Defendants only argue that similar allegations were resolved against the Plaintiffs in the area of congressional redistricting. While that decision is, of course, being appealed to the Supreme Court of the United States, the situation here is perhaps even clearer than there. Even utilizing only the 1960 Census figures, an analysis of what counties were joined in senatorial districts indicate that in twelve (12) senatorial districts they joined counties with a predominately Negro population with

counties having a predominately white population to produce a senatorial districts having a predominately white population. The same pattern can be shown in the case of the districts set up for the election of representatives, although the greater correspondence between counties and districts limit the possibility of such racial gerrymandering. As the Defendants Brief indicates, the question of racial gerrymandering is in part a question of fact, and evidence thereon will in all likelihood be introduced at the hearing scheduled on this question; the Plaintiffs respectfully submit, however, that the statistics by themselves indicate the racial bias underlying the present redistricting proposal, as well as its failure to meet constitutional standards.

Dated this 30th day of December, 1966.

THE PLAINTIFFS.

BY_____

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I, Peter Marcuse, Attorney for the Plaintiffs, certify that I have served a copy of the foregoing Reply Brief of Plaintiffs on Martin R. McLendon, Assistant Attorney General, the attorney of record for the Defendants, by mailing a copy thereof on Friday, December 30, 1966, bu U. S. mail, postage prepaid to him.

This, the 30th day of December, 1966.

Peter Marcuse

Mississippi Reapportionment

CHALLENGE AGAINST THE LEGISLATURE
OF THE STATE OF MISSISSIPPI

A, B, C, and D for themselves and others similarly situated,

PLAINTIFFS,

-against-

PAUL B. JOHNSON, Governor of Mississippi, JOE PATTERSON, Attorney-General of Mississippi, The Secretary of State of Mississippi, The Speaker of the Mississippi House of Representatives, The President Pro Tempore of the Mississippi Senate, the Members of the State Board of Election Commissioners, The Chairman of the Executive Committee of the Mississippi Republican and Democratic parties,

DEFENDANTS.

I. JURISDICTIONAL STATEMENT

1. This action arises under United States Code Title 42, Section 1983 and Section 1988, and under the Constitution of the United States, particularly Article IV, Section 4, the Fourteenth Article of Amendment thereto, and the Fifteenth Article of Amendment thereto. Jurisdiction is conferred on this Court by United States Code, Title 28, Section 1343, Title 28, Sections 2201 and 2202, Title 22, Sections 2281 et seq., and Title 42, Sections 1983 and 1988.

II. PARTIES

2. Plaintiffs A, B, C, D and E are United States citizens, citizens of the State of Mississippi, Negroes, residents of V, W, X, Y and Z Counties in the said State of Mississippi, residents of the F, G, H, I and J Senatorial Districts, and residents of the 1st, 2nd, 3rd, 4th and 5th Congressional Districts. Each of them is a registered and qualified voter of the said State of Mississippi, lawfully entitled to vote in all primary, general and special elections for members of the legislature of the State of Mississippi, and for members of the House of Representatives from their Congressional District. Plaintiffs K and L are United States citizens, citizens of the State of Mississippi, Negroes, residents of X and Y Counties who have, prior to August 7, 1965, been unlawfully prevented from exercising their right to vote in primary general, and/or special elections

for members of the Legislature of the State of Mississippi. Plaintiffs jointly and severally bring this action on their own behalf and on the behalf of all other citizens of the State of Mississippi who are similarly situated, such persons being so numerous as to make it impractical to bring them all before this Court. A common question of law and fact exists as to all such Plaintiffs, and a common relief is sought.

2a. MFDP plaintiff on behalf of other Negroes adversely affected.

3. The defendant Johnson is sued in his capacity as Governor of the State of Mississippi and a member of the State Board of Election Commissioners; as such he is vested with certain authority over the conduct of elections of members to the Mississippi Legislature.

The defendant Patterson is sued in his capacity as Attorney-General of the State of Mississippi, and a member of the State Board of Election Commissioners; as such he is vested with certain authority over the conduct of elections of members to the Mississippi Legislature.

The defendant is sued in her capacity as Secretary of State of Mississippi and a member of the State Board of Election Commissioners; as such she has certain authority over the conduct of elections of members to the Mississippi Legislature.

The defendant is sued in his capacity as Speaker of the Mississippi House of Representatives; he is the presiding officer of that body, and is here sued as a representative of all presently acting members of said House.

The defendant is sued in his capacity as President Pro tempore of the Mississippi Senate, and he is the presiding officer of that body, and is here sued as the representative of ~~the duly elected, qualified and~~ all presently acting member of said Senate.

4. Common questions of law and fact are involved as to each plaintiff and each defendant named herein, and common relief is sought against each defendant named herein.

III. THE DENIAL OF THE RIGHT TO VOTE

5. Up to and including the date of the election of the present Legislature of the State of Mississippi, there has been a systematic denial of the right to

vote to Negro citizens of the State of Mississippi. Said denial of the right to vote has been effectuated by the following methods, to wit;

a. The passage of legislation interfering with and improperly restricting the right to vote of Negroes, both openly and through the use of devices not appearing to be directed towards disfranchising Negro citizens but in fact having that purpose and effect;

b. Violence and intimidation by public officials, including many elected to office, consisting of assault on Negroes who have attempted to register and others who accompany them to register, and physical intimidation of those suspected of desiring to vote;

c. Action by public officials condoning private violence, including refusals to protect Negroes and prevent assaults upon them and refusals to ascertain the facts and punish the wrongdoers, when such assaults have taken place;

d. Economic retaliation against Negroes who seek to register, accomplished with the aid of public officials, consisting of taking pictures of those who attempt to register; the printing of the names and addresses of those who wish to register and the requiring of Negroes to return to the registrar's office to determine whether he has passed the test; all aimed at endangering the personal economic position of any Negro attempting to exercise his right to vote.

e. Misuse of broad discretion by local officials involved in the administration of laws having to do with the right to vote, including the application of different and more stringent standards to Negro applicants than to white, rejection of the applications of qualified Negroes, rejections of Negroes who have equal or superior qualifications than whites who were accepted

f. Delays, obstruction, technical obstacles, and refusal of routine administrative assistance by voter registrars to Negro applicants, including subjecting Negro applicants for registration to procedures different from those applied to white applicants, refusals to permit Negroes to apply, unreasonable delays, denying Negroes assistance but furnishing assistance and answers to whites, falsely advising Negroes that they failed the test, and refusals by registrars to see and process Negro applicants.

IV. THE DILUTION OF THE RIGHT TO VOTE

6. The present apportionment scheme for the State Legislature and Congressional districts establishes irrational individuals, discriminatory and

unequal representative districts which have in the past and presently deprive plaintiffs and all others similarly situated rights guaranteed them by the Constitution of the United States and the State of Mississippi.

a. Issaquena County has a population of 3,576 and one representative while Forrest County has a population of 52,722 and two representatives or a representative for each 26,361. Thus the vote cast by a person in Issaquena County is worth 7.4 times as much as a vote cast by a person in Forrest County. In Benton County 7,723 citizens are represented by one representative while in Oktibbeha County there is only one representative for 26,175 people. Thus a vote cast in Benton County is worth 3.37 times as much as a vote cast in Oktibbeha. In Stone County 7,013 people have a representative, while in Washington County there is one representative per each 26,213 residents. Thus a vote cast in Stone County is worth 3.74 times as much as a vote cast in Washington County (See Exhibit "C" for a county by county analysis. All figures are compiled from the 1960 Census Report.)

b. A majority of members of the Mississippi House of Representatives is elected by as few as 878,551 out of a population of 2,163,422 or 40.3% of the population control a majority of seats of said body. (See Exhibit "C").

c. Each of the 82 representatives districts in the State of Mississippi should contain 17,034 persons to be apportioned on a strict population basis. At present, 53 of said 82 districts deviate from this norm by more than 15%. Of the deviations, 24 exceed the norm by more than 15% while 29 fail to meet the norm by more than 15%. (See Exhibit "C")?

d. As to the Senate, district 44 has a population per senator of 20,987 while district 1 has a population per senator of 187,045. Therefore, a vote cast in district 44 is worth 8.5 times as much as a vote cast in district 1. In district 36 the population per senator is 24,497 while in district 2 the population per senator is 119,489. Each vote in district 36 is worth 4.8 times as much as a vote in district 2. (See Exhibit "C").

e. A majority of votes in the Senate represents as few as 820,249 persons out of a total State population of 2,163,422 or 37.7% of the population of the State control a majority of votes in the State Senate. (See Exhibit "C").

f. Each of the 49 senatorial districts should have a population of 41,887 persons per senator to be apportioned on a strict population basis. At present 32 of the said 49 districts deviate from this norm by more than 15%. Of the deviations 8 exceed the norm by more than 15%, while 24 fail to meet the norm by more than 15%. (See Exhibit "C").

V. CAUSES OF ACTION

7. The facts herein alleged constitutes a denial to the plaintiffs of the equal protection of the laws as guaranteed to them by the Fourteenth Amendment to the United States Constitution.

8. The facts herein alleged constitute a violation of the right to vote of the plaintiffs under the Fifteenth Amendment to the United States Constitution.

9. The facts herein alleged constitute a denial to the plaintiffs of their right to a republican form of government, in violation of Article 1, Section 4 of the United States Constitution.

10. Plaintiffs and all others similarly situated are suffering irreparable injury to their aforesaid rights by reason of said facts. They have no plain, adequate, or complete remedy to redress these wrongs other than by this suit for declaratory judgment and injunctive relief. Any other remedy would be attended by such uncertainties and delays so as to deny substantive relief, and would cause further irreparable injury, damage, expense, and inconvenience to plaintiffs and all others similarly situated.

VI. BASIS FOR THE SPECIFIC RELIEF REQUESTED

11. Plaintiffs and all others similarly situated have no adequate political remedy for the wrongs resulting from the denial to them of the right to vote because the Mississippi Legislature is inherantly incapable of securing the constitutional rights of said plaintiffs for the reasons that:

a. Negro citizens have been and are systematically excluded from participation in the election of past as well as the present Legislature, in violation of the Fifteenth Amendment to the Federal Constitution;

b. The Mississippi Legislature has consistently, systematically and purposefully discriminated against Negro citizens of Mississippi. Such discrimination evidences the incapacity of this Legislature to protect and enforce

the constitutional rights of the plaintiffs.

12. Plaintiffs and all others similarly situated have no adequate political remedy for the wrongs resulting from the dilution of their right to vote because the present Mississippi Legislature is inherantly incapable of preparing a valid reapportionment plan consistent with the United States Constitution for the reasons that:

a. The apportionment plan under which the Legislature was elected was adopted only three (3) years ago, and yet is on its face unconstitutional;

b. The present Legislature controls the process by which the Mississippi Constitution is amended. The history of past reapportionment by the Mississippi Legislature in general and this Legislature in particular demonstrates that the primary purpose and effect of acts of reapportionment has been to continue the dominion of those groups presently overrepresented at the expense of the plaintiffs and all others similarly situated, and there is no reason to believe the Legislature will depart from this course in the future.

13. Unless this Court grants the relief prayed for herein, the result will be the continued sitting of a legislature unconstitutionally elected in a derogation of the constitutional rights of the plaintiffs and all others similarly situated. Said legislature would continue to sit until January of 1969 and exercise direct governmental power in said State. Plaintiffs and others similarly situated have been, are and will be denied fair representation in the halls of their State Government for a period of over three (3) years duration. During this said period, legislative action and inaction will occur which will directly affect the most fundemental interests of the plaintiffs and others similarly situated. The unconstitutionally elected legislators are responsible for the educational needs of the plaintiffs and all others similarly situated, as well as the health and welfare of the said plaintiffs. The legislature is responsible for public safety, the administration of criminal justice and for the protection of the constitutional liberties of said plaintiffs. Said legislators will have responsibility and influence over Federal programs designed to meet pressing social and economic problems of many of the State's citizens, such as the Federal anti-poverty programs, aid to education, urban renewal programs, and public housing programs. Plaintiffs and

all others similarly situated have a constitutional right to representation, which right has been and is presently denied, and the restoration of which cannot be permitted to await action by the present legislature of the State of Mississippi or the expiration of its term. This Court has the power and duty to remedy this evil, which evil should not be allowed to continue.

VII. PRAYERS FOR RELIEF

14. Wherefore plaintiffs, on behalf of themselves and all others similarly situated, pray that this Court:

a. Assume jurisdiction in this matter and convene a statutory three-judge court pursuant to #22 United States Code Sections 2281 et sec.

b. Declare plaintiffs' rights to the effect that the present Mississippi Legislature was elected and is sitting in violation of the Fourteenth Amendment to the Federal Constitution, the Fifteenth Amendment to the Federal Constitution and Article IV (#4) thereof.

c. Declare plaintiffs' rights to the effect that the present scheme of apportionment of the Mississippi Legislature violates the Fourteenth Article of Amendment to the United States Constitution as a denial of the Equal Protection of the laws; that Section 254 and Section 255 of the Mississippi Constitution are unconstitutional as repugnant to the United States Constitution and therefore are null, void, frustrate and of no effect.

d. Declare vacant the offices of representatives and senators in the Mississippi House of Representatives and Senate.

Further, plaintiffs, on behalf of themselves and all others similarly situated, pray this Court for the following injunctive relief:

e. Enjoin defendants from carrying out each and any constitutional and legislative duty pertaining to the conduct of the legislative business of the State of Mississippi.

f. Enjoin the conduct of any primary, general or special election for the Mississippi State Legislature until such time as this Court finds that the plaintiffs possess the rights guaranteed them by the Constitution of the United States.

g. Require the defendants to take such action as may be appropriate to remedy the denial by them of the right to vote to the plaintiffs and others

similarly situated, by action such as, but not limited to:

i. Establishing mobile registration units for the purpose of registering Negro citizens who have been denied the right to register.

ii. Requiring the registrars of the State to keep open their offices, on six days of the week, Monday through Saturday, from nine in the morning to nine in the evening, to facilitate registration to vote.

iii. Individually notifying Negro citizens of the State of their ability to register and to vote freely, and affirmatively soliciting their doing so.

h. Appointing a special master to prepare a plan of apportionment for the House of Representatives and the Senate of the State of Mississippi.

i. Require the holding of a special election for the said House and Senate when the foregoing has been accomplished.

j. Further the plaintiffs pray that this Court allow the plaintiffs their cost herein including reasonable attorney fees.

k. Further, plaintiffs pray that this Court retain jurisdiction to supervise and guarantee the proper performance of the foregoing, and to grant such other and further relief as to this Court seems just, equitable and proper.

Draft of Jurisdictional Statement in
Connor v. Johnson: January 4, 1967.

Whether the congressional districts drawn by the Miss. Legislature in 1966 which have racially discriminatory results violate the Fourteenth Amendment

QUESTION PRESENTED

Whether the racially discriminatory purpose and effect of the congressional district lines, as drawn by the Mississippi Legislature in 1966, violate the Fourteenth and Fifteenth Amendments of the Constitution of the United States,

OR

Whether the congressional district lines, as drawn by the Mississippi Legislature in 1966, were intended to accomplish, or had the effect of accomplishing, racial discrimination in violation of the Fourteenth and Fifteenth Amendments of the Constitution of the United States,

OR

Whether the Fourteenth Amendment or the Fifteenth Amendment of the Constitution of the United States is

violated by action of the Mississippi Legislature in drawing congressional district lines that operate to minimize or cancel out the voting strength of the 42 per cent Negro population of the State of Mississippi.

STATEMENT OF THE CASE

[To be supplied by Peter Marcuse.]

THE QUESTIONS ARE SUBSTANTIAL

In this appeal two great constitutional principles converge in circumstances that compellingly demand rectification of the denial or dilution of the free exercise of the right of franchise because of discrimination on grounds of race or color.

First. This Court has long acknowledged, in a wide variety of situations, that racial discrimination at the hands of the state, whether intentional or not, is forbidden. Most often the racially discriminatory action is said to violate the equal protection of the

laws clause of the Fourteenth Amendment; but sometimes, where the right to vote is at issue, the more specific prohibition of the Fifteenth Amendment has been invoked.

Second. More recently this Court has held that states, in drawing congressional district lines, are bound to preserve substantial population equality among the districts within each state. Wesberry v. Sanders, 376 U.S. 1 (1964).

The question newly presented in this appeal is whether proof of racial discrimination in the drawing of the congressional district lines is amenable to judicial relief even though the population disparity among the districts might not be viewed as substantial apart from the evidence of forbidden discrimination. There should be no doubt that the answer to the question as just stated would be affirmative. But

there are important questions, also presented by this appeal, as to the nature and quantum of the proof of discrimination that must be tendered in order to make the cause actionable. As will be shown below, previous Supreme Court decisions do not definitively answer these questions. As a result, state courts and the lower federal courts have given conflicting responses to these vital issues.

I

Deprivation or Dilution of the Right to Vote Because of Race of Color Violates the Fourteenth Amendment or the Fifteenth Amendment, or Both.

This Court has repeatedly emphasized the importance to representative democracy of the unimpaired right of franchise. In Yick Wo v. Hopkins, 118 U.S. 356, 370 (1886), this Court stated that the right of

franchise is "a fundamental political right because preservative of all rights." More recently, in Reynolds v. Sims, 377 U.S. 533, 555 (1964) this Court observed:

> The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government. And the right of suffrage can be denied by debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise.

See also Carrington v. Rash, 380 U.S. 89, 96 (1965); Wesberry v. Sanders, 376 U.S. 1, 17 (1964); Gomillion v. Lightfoot, 364 U.S. 339 (1962); South v. Peters, 339 U.S. 276, 279 (1950) (Mr. Justice Douglas, dissent-

ing). As Mr. Justice Black noted in Wesberry v. Sanders, supra, "No right is more precious in a free country than that of having a choice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined."

A. Deprivation of the Right to Vote Because of Race.

The equal protection of the laws clause of the Fourteenth Amendment forbids denial of the right to vote on grounds of race or color, and the Fifteenth Amendment specifically forbids discrimination in the exercise of the franchise because of race or color. Moreover, the Constitution "nullifies sophisticated as well as simple minded modes of discrimination." Lane v. Wilson, 307 U.S. 268, 275 (1939). Most notable

are the so-called White Primary Cases, some based on the Fourteenth Amendment, Nixon v. Herndon, 273 U.S. 536 (1927) and Nixon v. Condon, 286 U.S. 73 (1932), and some on the Fifteenth Amendment, Guinn v. United States, 238 U.S. 347 (1915), Lane v. Wilson, 307 U.S. 268 (1939), United States v. Classic, 313 U.S. 299 (1941), Smith v. Allwright, 321 U.S. 649 (1944), and Terry v. Adams, 345 U.S. 461 (1953).

Other right-to-vote cases, raising related issues of discrimination, have also been grounded on the Fourteenth and Fifteenth Amendments. See, e.g., Gomillion v. Lightfoot, 364 U.S. 339 (1960) (legislative redrawing of municipal lines to exclude Negro voters violates Fifteenth Amendment); Carrington v. Rash, 380 U.S. 89 (1965) (limitation of right of resident members of armed forces to vote in state elections violates Fourteenth Amendment). See also

United States v. Mississippi, 380 U.S. 128 (1965);

Louisiana v. United States, 380 U.S. 145 (1965);

Harper v. Board of Elections, 383 U.S. 663 (1966);

South Carolina v. Katzenbach, 383 U.S. 301 (1966);

Katzenbach v. Morgan, 384 U.S. 641 (1966).

The present appeal presents an issue similar to that in Gomillion, supra, because here, as there, the state legislature has drawn electoral lines with the intent and effect of minimizing or canceling out the voting strength of the 42 per cent Negro population of the State of Mississippi. Here, as in Gomillion, the right to vote somewhere is not denied; but the right to cast an effective ballot is effectively eliminated. Accordingly, appellants urge that the action of the Mississippi Legislature, operating to deprive Negroes of the right to cast a meaningful ballot, denies appellants equal protection of the laws

in violation of the Fourteenth Amendment and violates the Fifteenth Amendment as a denial or abridgment of the right to vote on grounds of race or color.

B. Impairment of the Right to Vote Because of Race.

The Fourteenth and Fifteenth Amendments protect the right of franchise not only against absolute denial, but as well against dilution or impairment, whether on grounds of malapportionment or on grounds of race or color. This Court has not before had an occasion to rule directly on the question presented by this appeal, racial discrimination by gerrymander, so the case is especially appropriate for plenary consideration, with briefs on the merits and oral argument.

This is not to suggest, however, that previous opinions of this Court have not offered guidance on this subject. The first case that raised the issue

at least tangentially was Wright v. Rockefeller, 376 U.S. 1 (1964), in which the majority of this Court accepted "the findings of the majority of the District Court that appellants failed to prove that the New York Legislature was either motivated by racial considerations or in fact drew the districts on racial lines." Id. at 56. There was, however, nothing in the majority opinion to suggest approval of racial gerrymandering. As Mr. Justice Black noted, "our holding has no bearing on that wholly separate question." Id. at 58. Indeed, both dissenting opinions, by Justices Douglas and Goldberg, specifically stated that racially motivated districting is unconstitutional, a proposition with which the majority expressed no disagreement and with which disagreement is scarcely possible. The difference, then, was only whether "the factual pattern of segregation was

sufficient to establish a prima facie case of unconstitutional racial districting." Id. at 74 (Mr. Justice Goldberg; dissenting). As we shall more fully demonstrate below, the pattern of voting segregation in this appeal is much more vividly realized on the present record. Moreover, there are not in this case, ~~as there not in this case,~~ as there were said to be in Wright, any "conflicting inferences" of legislative purpose which could be drawn from the evidence.

In more recent majority opinions this Court has noted that racially motivated action in legislative reapportionment or in congressional districting may be held to violate the Constitution upon an appropriate factual showing. In Fortson v. Dorsey, 379 U.S. 433, 439 (1965) Mr. Justice Brennan observed:

> It might well be that, designedly or otherwise, a multi-member constituency apportionment sbheme, under the circumstances of a particular case, would operate to minimize or cancel out the voting strength of racial or political elements of the voting populatiaan. When this is demonstrated it will be time enough to consider whether the system still passes constitutional muster.

But again, as in Wright, that question was "not presented by the record before us." Ibid. Similarly, in Burns v. Richardson, 384 U.S. 73 (1966) the Court refused to set aside the multi-member constituencies provided for by the Hawaii Legislature in its reapportionment plan on the basis of mere assertion that some racial and ethnic groups would be disadvantaged.

"Speculations do not supply evidence that the multi-member districting was designed to have or had the invidious effect necessary to a judgment of the unconstitutionality of the districting." Id. at 88-89. Moreover, in the Hawaii case "the legislature did assign reasons for its choice." Id. at 89.

In the present instance, on the other hand, the Mississippi Legislature, emerging from its secret meetings, gave no reasons to support the districting adopted, and the state officials in the proceedings below suggested no reasons. No inference or justification is possible except the bare fact of facial discrimination, made evident by examination of the lines drawn. Manifestly, these discriminatory effects were intended.

C. Confusion in State Courts and Lower Federal Courts

As a result of the statements of this Court in Wright v. Rockefeller, Fortson v. Dorsey, and Burns v. Richardson, discussed above, state courts and lower federal courts, as well as some commentators, have raised constitutional doubts about ~~expressed doubt on~~ several aspects of the gerrymander for partisan or racial purposes. Those questions, on which guidance can be given in the present appeal, may be identified as follows.

1. What quantum of proof is necessary to establish a forbidden racial gerrymander? Appellants read Wright v. Rockefeller, 376 U.S.1 (1964) to hold only that in the circumstances of that case racial motivation was not established. Instead, this Court agreed with the lower court that an inference of other motivation was possible. Presumably, the other inference elliptically referred to was that there had

been a gerrymander for partisan advantage; but since neither the opinion of this Court nor any of the several opinions of the court below dealt with this question, other courts can only speculate as to the permissibility or not of the political gerrymander, a matter dealt with in question 2 below.

There should be no doubt that the racial gerrymander is forbidden where sufficient proof of that fact is presented. Where the question has been squarely presented, as in Sims v. Baggett, 247 F. Supp. 96, 104-105 (M.D. Ala. 1965), the court so ruled. Cf. Grills v. Branigin, 255 F. Supp. 155, 156 (S.D. Ind. 1966). Meanwhile, however, another court has read Fortson v. Dorsey to endorse a plan providing for multi-member districts in state legislative reapportionment without considering the rather persuasive evidence of racial motivation. Hainsworth v. Martin, 386 S.W. 2d 202

(Civ. App. Tex. 1965), vacated as moot, 382 U.S. 109 (1965), rehearing denied, 382 U.S. 1002 (1966). See also Kilgarlin v. Martin, 252 F. Supp. 404, 434-44 (S.D. Tex. 1966). The present appeal presents an opportunity to correct what appellants believe is a failure of lower courts to understand the dicta in Fortson v. Dorsey and in Burns v. Richardson.

In any event, guidance is urgently necessary on the question of the showing required to establish a prima facie case of racial discrimination in the establishment of electoral lines. See Note, The Apportionment Cases: An Expanded Concept of Equal Protection, 1965 Wis. L. Rev. 606, 632-50.

2. Is the political gerrymander constitutionally forbidden?

Appellants believe that a political gerrymander should also be forbidden because partisan considerations

are not within the matters that can be taken into account in apportionment or districting. See Reynolds v. Sims, 377 U.S. 533, — (1964). Moreover, this seems to be the sense of Mr. Justice Brennan's identification, in Fortson v. Dorsey, 379 U.S. 433, 439 (1965), of the circumstances that might be invidiously discriminatory. They were, he said, those that "would operate to minimize or cancel out the voting strength of racial or political elements of the voting population." (Emphasis supplied.) But cf. WMCA, Inc. v. Lomenzo, 382 U.S. 4, 6 (1965), where Mr. Justice Harlan, concurring, concluded that partisan gerrymandering is not subject to federal constitutional attack. Several courts have accepted Mr. Justice Harlan's conclusion that the partisan gerrymander is immune from constitutional attack. See, e.g., Meeks v. Avery, 251 F. Supp. 245 (D. Kans, 1966); Bush v. Martin,

partisan
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are diffcult
constitutionally

251 F. Supp. 484, 513 (S.D. Tex. 1966); Grills v. Branigin, 255 F. Supp. 155, 156 (S.D. Ind. 1966).

If this latter group of cases are wrong on this point, as appellants believe, the present appeal provides an opportunity for clarification of that question. Although in the present case appellees, officials of the State of Mississippi, offered no reasons in justification of the lines as drawn, it is reasonable to infer that they ask the Court to believe, as in Wright v. Rockefeller, that the manifold irregularities in the Mississippi congressional districting were prompted by partisan rather than racial considerations. Appellants believe the record in this case establishes conclusively that the intent and effect of the districting were racially motivated and thus invalid. This contention is reviewed in part II below. However, appellants believe that an implied defense of partisan

motivation is also forbidden for the reasons above outlined.

II

The Congressional Districting Plan Adopted by the Mississippi Legislature in 1966 Is Unconstitutional

In Wesberry v. Sanders, 376 U.S. 1, 7 (1964) this Court stated the controlling principle for congressional districting to be "that as nearly as practicable one man's vote in a congressional election is to be worth as much as another's." This Court emphasized in Reynolds v. Sims, 377 U.S. 533, 578 (1964) that congressional districts must satisfy even more exactly the equal-population principle than state legislative districts.

> Since, almost invariably, there is a significantly larger number of seats in state legislative bodies to be distributed within a State

than congressional seats, it may be feasible to use political subdivision lines to a greater extent in establishing state legislative districts than in congressional districting while still affording adequate representation to all parts of the State.

See also McKay, Reapportionment 222-29 (1965).

The 1966 congressional districting act of the Mississippi Legislature appears on its face to meet the foregoing test of substantial equality. The population deviations from the mean of approximately 435,000 do not exceed 3 per cent, which would normally not seem excessive. However, as will more fully appear below, other plans can be readily devised that more exactly satisfy the equal-population standard, without division of any county, and at the same time preserving more perfectly the historical pattern of

congressional districting in Mississippi, conforming more nearly to socio-economic-topographical patterns in the state, and altogether free of the racial gerrymander. All these criteria of rational congressional districting could easily have been satisfied by the adoption of any one of several alternatively available plans. Indeed, it would not have been possible to devise a plan that satisfied all these criteria to any substantial extent without at the same time ~~making at least possible the election of~~ creating a congressional ~~Congressman from~~ a district with a substantial majority of Negroes of voting age. Accordingly, the plan actually adopted must be set aside.

A similar point has been effectively made by the New Jersey Supreme Court in Jones v. Falcey, 48 N.J. 25, , 222 Atl. 2d 101 (1966).

The Constitution, as construed in Wesberry and Reynolds, does not contemplate that there is a range of deviation within which a State may maneuver, with or without reason. On the contrary, the command is to achieve equality, and a limited deviation is permissible only if there exists an acceptable reason for the deviation. So, a limited deviation may be acceptable if it is needed to stay with the lines of existing political subdivisions and thus to avoid the spectre of partisan gerrymandering. But the deviation may not exceed what the purpose inevitably requires .//.

.//.

.//.

The record [in the New Jersey case] contains no explanation for any of the deviations described above. The Attorney General says we

should assume that adequate reasons do exist, in the absence of proof excluding them. We cannot accept that approach, for here, upon the face of things, the constitutional command for equality of representation has been breached. As the record stands, unconstitutionality appears affirmatively. Where a deviation results from adherence to the lines of political subdivisions, the reason is evident, and if the deviation is not excessive, a court can find the deviation is defensible. But where the deviation obviously exceeds that needed to permit the use of the lines of political subdivisions, the deviation spells out unconstitutionality, and a court must so hold unless the record affirmatively reveals a tenable basis for the legislative action. See also Drum v. Seawell,

249 F. Supp. 877, 250 F. Supp. 922 (M.D.N.C.), aff'd., 385 U.S. (1966); Calkins v. Hare, 228 F. Supp. 824, 827 (E.D. Mich. 1964). But see Kilgarlin v. Martin, 252 F. Supp. 404, 412 (S.D. Tex. 1966).

The gerrymander is essentially a device for constructing electoral units to the disadvantage of a disfavored group or to the advantage of a favored group, or for the accomplishment of both objectives at the same time. Now that malapportionment has been condemned and substantially reduced if not altogether eliminated, the gerrymander is the device currently most destructive of fairness in the electoral process. Nor are malapportionment and gerrymandering unrelated. Even though the equal-population principle may not of its own force forbid gerrymandering, malapportionment and the gerrymander are nonetheless of the same family.

Both arise out of the instinct for partisan or racial advantage in defiance of the democratic ideal. Malapportionment has been condemned. The gerrymander equally deserves condemnation.

Gerrymandering can be accomplished in at least three ways, as Andrew Hacker has pointed out in his study entitled Congressional Districting, at page 55 (rev. ed. 1964).

If the aim of gerrymandering is for one party to obtain the maximum voting advantage at the other's expense, there are several methods by which this can be done. In each, the gerrymandering party (henceforth to be called Party A) intends to make the votes of the opposition (Party B) as ineffective as possible. One method is for Party A to set up a district in which Party B will have "excess" votes - that is, considerably more votes will be cast for Party B's

candidate than he needs to win. A second method is to create a district where Party B's "wasted" votes - those cast for a predictable loser - will be increased. And the third is to design a district so that Party A's "effective" votes will be increased - usually by putting its own known followers into small districts compared to much larger districts for Party B's known followers.

If in the text above the term "one racial group" is substituted for "one party", the operation of the racial gerrymander is evident.

The obvious aim of the Mississippi Legislature in thinking ~~to have thought~~ such an arrangement necessary to the presentation of white supremacy is ironic testimony to the effectiveness of voting-equality decisions of

this Court and federal legislation designed to encourage registration among Negroes. Until the 1966 redistricting here challenged the Mississippi Legislature, with good reason, had never considered the possibility of a substantial Negro vote sufficiently likely to call for alteration of established patterns of congressional districting.

It would indeed be an unhappy frustration of the incipiently successful voter-registration campaign, as well as of the equal-population principle, to find those efforts now rendered nugatory by a racial gerrymander impervious to constitutional attack.

Appellants' contention that the congressional districting act adopted by the Mississippi Legislature in 1966 had the necessary effect of denying or impairing the franchise of Mississippi Negroes, and that

it was intended to have precisely that effect will be developed fully in the final sections of this brief. As a prelude to comments on the evidence, attention should be directed to the point that invalidity of the act can be established upon demonstration either that the Mississippi act was racially motivated or that the act "would operate to minimize or cancel out the voting strength of racial . . . elements of the voting population." Fortson v. Dorsey, 379 U.S. 433, 439 (1965).

It is of course clear that racially discriminatory intent on the part of state officials infects any action undertaken with the forbidden motivation. It should by now be equally apparent that state action whose effects produce racial disadvantage are also suspect even though the discriminatory consequences are not shown to have been intended. Wright v. Rockefeller

376 U.S. 52, 61-62 (1964) (Mr. Justice Douglas, dissenting); Johnson v. Virginia, 373 U.S. 61, 62 (1963); NAACP v. Alabama, 357 U.S. 449, 461 (1958); Eubanks v. Louisiana, 356 U.S. 584, 587-88 (1958).

A. The 1966 Mississippi Congressional Districting Act Operates to Minimize or Cancel Out the Voting Strength of the 42 per cent Negro Population of the State of Mississippi.

As has already been demonstrated in the Statement, supra, the _____ congressional districting acts approved by the Mississippi Legislature in the twentieth century show a remarkable consistency of configuration. Although the number of Representatives has shrunk from ___ in 1900 to five after 1960, the districting pattern remained entirely discernible until the sharp break with the past first evidenced

in 1966.

Of the twenty-eight countries that have a population of more than 50 per cent Negroes, eighteen are in the area commonly known as the Delta, the region adjacent to the Mississippi River. In addition, for many reasons entirely apart from color the Delta forms a single natural geographic unit.

The Delta region, one of five major areas in the state of Mississippi, is a rich agricultural area lying adjacent to the Mississippi River and stretching by and large from the Mississippi eastward to the beginning of the Bluff Hills, and lying primarily between the Mississippi and the Yazoo River. It is an area of fertile ground, used over many generations almost exclusively for the growth of cotton, on which the plantation system, once prevalent throughout the South, achieved its greatest flowering. It is set apart

as a region through the richness of its soil, the singleness of the crops produced, the unique economic system through which that crop is developed, the presence of the Mississippi River as a common waterway and a scenic feature of the entire region, and, historically, by a unity of interest that has dominated the politics of the state for many generations. These facts are all reflected in the evidence introduced and by facts of which the court below took judicial notice; the United States Geodetic Survey Maps in the record clearly show the delineation of the area between the Mississippi and the foot hills of the Central Mountains, a line which has been traced upon appellants' Statistical Exhibit, a copy of which is set forth as Appendix A. Textbooks used in the Mississippi school system, including The Mississippi Story, by McLemore & McLemore, and Mississippi, A History, by Bettensworth,

each reflect the same clear concept of the unity of the Delta as a region. The same is true of publications of the Mississippi Industrial Development Commission, particularly its three dimensional topographic map which was introduced into evidence. R. _____.

The balance of the state is logically divisible into four major sections: (1) The Central Hills extending from the border of the Delta on the west to the Flatwoods area on the east, and running in a broad north-south band from the top of the State to the center, (2) The northeasterly section of the state, including geographically the Flatwoods, Pontotoc Ridge, Black Prairie, and Tennessee River Hills sections, (3) The southeastern area, including the Coastal Meadows along the Gulf of Mexico, and the Piney Woods north of them, and (4) The southwesterly part of the state, known as

the Loess Bluffs. Each of the regions can be traced easily on the United States Geodetic Maps, which give all key topographic features, and they are described in detail in the other references mentioned above.

Significantly, the Delta counties had always been kept together until 1966 when they were for the first time divided among four of the five districts. The reasons for the departure from traditional patterns of districting are unhappily apparent. Until the mid-1960's, when the bite of federal voter registration laws and decisions of this Court for the first time brought about the registration of substantial numbers of Negroes, the redictricting task could be accomplished without concern for the possible consequences of the Negro vote. Accordingly, redistricting in Mississippi was done as fairly as in other states, more so than

in many, with considerable attention to the realities of Mississippi socio-economic life and the topographical characteristics of the various natural and historic regions of the State.

If traditional patterns had again been honored in 1966, at least one congressional district would inevitably have emerged with a substantial majority, not only of absolute Negro population, but as well of Negroes of a voting age. Relevant population figures, broken down by race, are summarized below for the congressional districts here challenged and for another plan offered by appellants to show how readily a more rational plan could have been devised. (Comparative maps appear in Appendix B.) The substantial variety of alternative, more reasonable plans that could have been adopted (except to the extent unacceptable because non-discriminatory) is suggested by examination of

other plans offered to the court below. R. ___

	1966 Plan		Proposed Plan	
	White	Negro	White	Negro
First District				
Second District				
Third District				
Fourth District				
Fifth District				

The congressional district lines drawn by the 1966 Mississippi Legislature run counter to the economics, sociology, history, and geography of the State of Mississippi. The new lines distort and mutilate what would otherwise have been natural and obvious; ~~and~~ the necessary consequence is impairment of the right of franchise of the substantial Negro population of the state.

B. The Evidence Shows That the Mississippi Legislature Affirmatively Intended to Discriminate Because of Race or Color in the 1966 Congressional Districting Act.

While the facts as to the significance of the redistricting lines adopted by the Mississippi Legislature, in terms of their effect on the Negro vote, speak for themselves, an attempt has nevertheless been made to assemble all of the evidence reasonably available to appellants as to the specific intent of the Legislature in acting as it did. The available evidence shows that the racially discriminatory result of the redistricting lines was not accidental, but was in fact the precise objective of the Legislature. The only apparent concern of the Legislature was to draw the lines in such a manner that its discriminatory intent would not be so obvious as to foreclose any chance of success in the lawsuit already pending.

This appeal does not present the usual problem of seeking to determine the legislative intent behind a given statute. The Mississippi Legislature has learned from experience that federal courts will take judicial notice of the rigid policy of segregation and discrimination in Mississippi as one court after another has invalidated legislative acts of the State of Mississippi. The Legislature has seen its own debates used as evidence of such unconstitutional and improper motivation. As a result, the Mississippi Legislature has stopped entirely keeping any record of its own debates. Access to its galleries is limited by its own rules to those admitted at the request of individual members of the Legislature. What reports were introduced into evidence in the court below as to debates of the Legislature are replete with references to the likelihood of litigation on the subject

of the discriminatory nature of the present redistricting, and one legislator after another can be found advising his colleagues to talk less about the Negro vote because of the bearing upon possible litigation. R. ____. Proof of legislative intent must thus necessarily be based on incomplete accounts and indirect references.

Taking into account these well known facts, what does the available evidence indicate? First, it indicates a clear awareness by the Mississippi Legislature of the possibilities inherent in the conscious handling of congressional district lines to achieve desired purposes. After the 1960 census, when redistricting was required because of the elimination of a congressional seat as the result of a reduction in population, two congressional districts were combined to eliminate an annoyingly liberal congressman, as

described in detail in Frank Smith's Congressman from Mississippi. Second, every reported debate on the subject indicates a major concern for the impact of any new proposal on the actual and potential Negro vote. Brief quotations from legislators set forth in the newspaper stories introduced into evidence show this clearly:

Jackson Daily News,
January 14, 1966:

"Did the Negro situation enter in this re-districting plan?" When he got no answer to his question he said, "we all know the Negro situation was the main factor."

"When this bill is attacked in the courts they're going to look into what areas were moved, where they were moved and for what purposes they have been moved. They were moved so there shall

not be a majority of certain groups in a district. The courts will consider a similar case and they'll throw this out. We will have congressmen elected at large or by districts fixed by the Supreme Court.

This patently was drawn in a manner to devalue the vote of a certain group of people."

"Backers of the plan did not deny that the Delta area was split up to divide the heavy Negro vote."

Jackson Daily News,
March 7, 1966:

"The Bill had a little too much discrimination to be ignored by the courts."

Jackson Clarion
Ledger
April 1, 1966:

"A plan adopted by the Senate would have given

the Second (District) a heavy Negro majority, but the House rejected this in favor of five districts with white majorities. Most senators agree that unless one heavily-Negro majority district is established, the government will knock the redistricting plan out through the federal courts."

Jackson Daily News
April 7, 1866:

"Any bill that shows discrimination against a certain race they'll knock down. You are trying to take two white counties in northeast Mississippi out of the 2nd District and put a heavy Negro populated county in. They will say this bill is fraught with discrimination."

Even the statistics themselves tell the story clearly. Using the figures published together with the newspaper report in the Jackson, Mississippi, papers covering the passage of the finally adopted plan, the table set forth at page ___ summarizes the situation in the district with the largest Negro vote as to each of the plans reported in any detail in the Jackson newspapers. The pattern is clear. Starting with a plan in the House of Representatives with 42 per cent Negro population, and a white majority of over 15,000 even in the district with the heaviest Negro vote, we find next a Senate plan introduced which shows a Negro majority of more than 82,000 in one district. From these two positions, the steps toward the finally adopted compromise are clear. The House was persuaded to relinquish its insistence that no Negro majority be permitted in any district whatsoever;

and the Senate in return accepted a plan that excluded all possibility of an effective Negro vote in any district. It may be inferred that the House was persuaded that the opportunity for effective Negro participation in the elections was not a present risk in the compromise plan. That race was the single most important factor in arriving at this compromise can be seen as much from the Senate's repeated insistence that it was not so and that its motives were indeed honorable, as from the House's defiant insistence on stating its intentions without subterfuge or pretense.

One further item of evidence introduced is very revealing on the question of legislative intent. In the Jackson newspaper which reported the passage of the finally adopted Reapportionment Bill, a table was printed next to the redistricting map, showing figures

by county for Negro and white population and Negro and white voting age population. These figures do not accord with the United States Census for the same subject; they appear to be more recent, but their precise origin is neither known nor relevant. What is relevant about them is that the editor of the newspaper testified that they were delivered to the paper from the Legislature, together with the report of the passage of the act itself, by the paper's correspondent at the Legislature. From the manner in which they were handled, there is no doubt that they were considered to be the most significant figures on the basis of which to judge the redistricting plan. The fact that the Negro - white breakdown is openly and prominently featured further emphasizes the prominence of this factor in the Legislature's thinking. Even more significant, however, is the fact that these

figures, apparently the ones actually used by the Legislature, show that in no district is there a Negro voting age majority. Onethe contrary, there is a safe plurality of 32,581 white voters in the first congressional district, the district with the heaviest Negro concentration.

Putting together the pluralities by congressional district, ~~on the same basis as used on page 3 of this Brief,~~ the results the Legislature intended and expected to get are clear:

First District	White Majority	32,581
Second District	White Majority	69,772
Third District	White Majority	52,632
Fourth District	White Majority	54,767
FifthDistrict	WhiteMajority	143,923

No clearer statement of the common knowledge and understanding of what was involved in the redistricting scheme could be given than that elicited by the

Court itself from Mr. McLauren, the Chairman of the Mississippi Freedom Democratic Party's Congressional Campaign Committee. Mr. McLauren precisely and pointedly testified that it was the obvious intent of the Legislature to create a situation in which the right of the Negro to vote would be effectively wiped out. Perhaps most damning of all is the handling of the issues of fact in this case by appellees. The Governor of the State of Mississippi, its Attorney-General, its Secretary of State, and the leaders of both its House of Representatives and its Senate, representing all members of those two august bodies, were defendants in this action. They were specifically charged in the amended complaint with an improper intent in the following language:

"The intent, purpose, and necessary effect of such new plan was and is to create congressional districts with such boundaries as to dilute and in all likelihood render ineffective the right to vote of the individual Plaintiffs and the class they represent in elections for members of the United States House of Representatives for Mississippi." (Par. 5(j))

"The intent, purpose and necessary effect of such new plan will further be in all likelihood, to deny to the plaintiff, Mississippi Freedom Democratic Party and its members and candidates a fair opportunity to vote and to elect candidates to the United States House of Representatives for the State of Mississippi." (Par. 5(l))

Testimony by them denying such allegations would certainly be expected. Yet appellees offered no evidence or

testimony whatsoever on the question of legislative intent.

The testimony introduced by appellants, standing entirely uncontradicted, merits credence on the crucial point of racial motivation in the legislative action here challenged.

RAND McNALLY

STATE COUNTY OUTLINE MAP

MISSISSIPPI

SIZE 8½ x 11

MISSISSIPPI COUNTIES
Total Number 82
1960 Populations

Pop	County	Index
37,730	Adams	C 19
25,282	Alcorn	O 1
13,573	Amite	L 20
21,233	Anite	K 11
7,723	Benton	L 2
34,464	Bolivar	E 7
13,961	Calhoun	K 6
13,177	Carroll	I 9
16,891	Chickasaw	M 7
8,423	Choctaw	L 9
10,845	Claiborne	E 16
16,692	Clarke	O 16
16,933	Clay	N 8
66,212	Coahoma	F 3
27,051	Copiah	G 16
13,657	Covington	K 16
23,891	De Soto	I 2
32,772	Forrest	L 20
9,266	Franklin	E 19
11,093	George	O 22
8,366	Greene	O 20
18,609	Grenada	J 7
16,228	Hancock	K 24
119,699	Harrison	M 24
167,043	Hinds	G 13
27,096	Holmes	H 10
19,293	Humphreys	G 10
5,576	Issaquena	D 12
15,680	Itawamba	O 4
55,522	Jackson	O 23
16,909	Jasper	L 16
10,142	Jefferson	D 17
13,341	Jefferson Davis	I 18
39,562	Jones	L 18
12,277	Kemper	N 12
21,253	Lafayette	K 4
13,693	Lamar	K 20
67,119	Lauderdale	O 14
30,213	Lawrence	H 18
19,660	Leake	K 12
40,569	Lee	N 4
47,142	Leflore	G 9
26,739	Lincoln	G 19
46,629	Lowndes	O 9
22,964	Madison	H 12
23,593	Marion	I 20
24,503	Marshall	K 2
32,953	Monroe	O 7
13,320	Montgomery	J 9
20,937	Neshoba	I 12
19,317	Newton	L 14
16,826	Noxubee	O 10
26,173	Oktibbeha	M 9
28,791	Panola	I 4
22,611	Pearl River	J 22
8,743	Perry	M 20
33,063	Pike	G 20
17,232	Pontotoc	M 3
17,969	Prentiss	O 3
21,019	Quitman	G 5
34,222	Rankin	I 13
21,167	Scott	K 14
10,724	Sharkey	E 12
20,454	Simpson	I 16
14,362	Smith	K 16
7,613	Stone	M 22
45,930	Sunflower	F 8
24,061	Tallahatchie	H 8
18,136	Tate	I 3
19,093	Tippah	M 2
13,829	Tishomingo	P 2
16,826	Tunica	G 3
13,904	Union	M 5
13,512	Walthall	H 20
42,206	Warren	E 14
76,634	Washington	E 10
18,258	Wayne	N 19
10,368	Webster	K 8
12,235	Wilkinson	C 20
19,246	Winston	L 11
12,363	Yalobusha	J 6
31,633	Yazoo	O 13

2,178,141 STATE TOTAL

TENNESSEE

CRITTENDEN · SHELBY · FAYETTE · HARDEMAN · McNAIRY · HARDIN · LAUDERDALE

DE SOTO · MARSHALL · BENTON · TIPPAH · ALCORN · TISHOMINGO · COLBERT

LEE · TUNICA · TATE · PRENTISS · FRANKLIN

PHILLIPS · PANOLA · LAFAYETTE · UNION · ITAWAMBA

QUITMAN · LEE · PONTOTOC · MONROE

COAHOMA · HARMON

ARKANSAS

DESHA · BOLIVAR · YALOBUSHA · CALHOUN · CHICKASAW · LAMAR

TALLAHATCHIE · SUNFLOWER · GRENADA · CLAY

LEFLORE · WEBSTER · LOWNDES

CARROLL · MONTGOMERY · OKTIBBEHA · PICKENS

CHICOT · WASHINGTON · CHOCTAW

HUMPHREYS · HOLMES · ATTALA · WINSTON · NOXUBEE

SHARKEY · SUNTER

EAST CARROLL · ISSAQUENA · YAZOO · LEAKE · NESHOBA · KEMPER

MADISON

ALABAMA

WARREN · SCOTT · NEWTON · LAUDERDALE

MADISON · HINDS · RANKIN · CHOCTAW

TENSAS · SMITH · JASPER · CLARKE

LOUISIANA

CLAIBORNE · COPIAH · SIMPSON

JEFFERSON · WAYNE

CONCORDIA · JEFFERSON DAVIS · COVINGTON · JONES

LINCOLN · LAWRENCE · WASHINGTON

ADAMS · FRANKLIN

LAMAR · FORREST · PERRY · GREENE

MARION

AMITE · PIKE · WALTHALL

WILKINSON · NOBILE

POINTE COUPEE · WEST FELICIANA · EAST FELICIANA · SAINT HELENA · TANGIPAHOA · WASHINGTON · PEARL RIVER · GEORGE

LOUISIANA · STONE

JACKSON

SAINT TAMMANY · HARRISON

HANCOCK

SCALE IN MILES
0 5 10 20 30 40

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This map is also available showing Cities. 4700

The majorities by congressional districts that exist under the plan adopted by the Legislature, using the least realistic of the several relevant sets of statistics available, total 1960 population, are as follows:

First District	Negro Majority	10,233
Second District	White Majority	58,623
Third District	White Majority	38,883
Fourth District	White Majority	6,194
Fifth District	White Majority	135,487

Using 1960 total population figures, there is thus a bare majority of Negroes in the First District.

Analyzing these figures somewhat further in terms of their real import for the Negro vote, however, we must first start with voting age population. Again using 1960 Census figures for voting age population, the breakdowns become:

First District	Negro Majority	429
Second District	White Majority	64,552
Third District	White Majority	48,743
Fourth District	White Majority	43,169
Fifth District	White Majority	143,685

The small Negro majority (10,233) of the total population in only one district shrinks to the tiny Negro <u>voting age</u> population majority in that district of only 429, or one-fifth of one per cent of the total voting age population of the district.

Were this Court blind to the realities of Mississippi history, and had no further evidence been introduced onthe question of voting in this State, it might still be possible for the Defendants to argue that there is at least one congressional district where there is a slight Negro majority. Such a statement is totally unrealistic, however. Until but a few years ago, fewer Negroes were registered to vote in the State of Mississippi than in any other State in the union, and the discrimination against Negro voters had been so severe that a total of only approximately seven percent of all eligible Negroes, according to generally accepted figures, had succeeded in being registered to vote. Over the last few years, numerous suits were filed by the Department of Justice challenging illegalities in preventing registration of Negro voters in the State, and decision after decision found effective blocks to Negro registration to have been used by voting officials. The cases are tabulated in the Exhibit introduced by the Plaintiffs. The situation became so scandalous that the Congress of the United States, at the urging of the President, finally passed the Civil Rights Act of 1964, which provided direct Federal implementation to

Progress in the registration of Negro voters since the passage of the 1965 Civil Rights Act has been significant. A representative of the Department of Justice, (charged to administer the voter registrar provisions of the 1965 Act), testifying at the trial of this action on the basis of departmental figures, figures compiled by the United States Civil Service Commission, and his own expert experience and knowledge of the field, stated that the percentage of Negro registration as of July 30, 1966 was approximately thirty percent of those eligible. On the other hand, he testified that the percentage of white voter registration was sixty-two percent. Using these actual and realistic figures, it is clear that no congressional district will actually have a Negro voting majority under the adopted plan.

Thus, the facts of life in Mississippi are that, after three hundred years of total legal disenfranchisement and one hundred years of complete practical disenfranchisement, a total of only seven percent of the eligible Negroes were able to register to vote, and after intensive efforts by numerous Mississippi and outside groups, and finally the substantial intervention of the Federal Government itself, that percentage could only be brought up to thirty-two percent, still one-half of the number of registered white voters. Using the percentages testified by Mr. J. Flannery , the corrected figures thus become as set forth below . Even if these figures are in error by a very wide margin, it is inconceivable that the differential between registered Negroes and registered whites would not be far more than sufficient to outweight the effects of the Negro majority of total population or the infinitesimal Negro voting age population, shown in the census figures. Thus, having no other figures before it, any legislature concerned to prevent a Negro majority from existing in any congressional district in the State could rest secure in the knowledge that it had done so with the present plan, the clear and obvious effect and result of which is to render ineffective the right of the Negro to vote in Mississippi in Congressional elections through skillful drawing of district lines.

First District	White Majority	3,084,402
Second District	White Majority	6,468,164
Third District	White Majority	5,811,496
Fourth District	White Majority	5,447,938
Fifth District	White Majority	10,417,020

III. THE DISCRIMINATION AGAINST NEGRO VOTERS WAS DELIBERATE AND INTENTIONAL.

A. No explanation of the district lines of the adopted plan is possible, other than discrimination.

Despite the obvious statistical unlikelihood that in a State with a forty-two percent Negro population, concentrated as shown on the map above, no single district would have a Negro majority, it is nevertheless within the realm of theoretical possibility that other strong and valid considerations might be of such overriding nature to produce five all-white districts as an unintended by-product. Such is not, however, the case here.

Various courts have alluded to or listed the factors that may properly be taken into account by a Legislature in drawing district lines. These include, apart from, of course, equality of population, the following: compactness and contiguity of territory, historical considerations, economic considerations, socio-economic considerations, relationships to existing political boundaries, and the need to have the end result, taken as a whole, fairly representative of all relevant groups within the State. See Holt vs. Richardson, 240 F. Supp. 724 at 730, and other cases cited below in Part IV.

To take these factors one by one in a search for some explanation other than race for the district lines in the plan adopted by the Legislature, we can clearly exclude the last alternative, fair representation of all relevant groups; color, whether one likes it or not, is a decisive fact of life for every Negro and every white in Mississippi, and the plan adopted clearly does not reflect the racial composition of the State in its anticipated results.

Nor is the plan adopted necessary in order to produce approximately equal populations in compact territories. Plaintiffs have introduced at least two alternative plans, each of which provide for at least as compact or even more compact geographical areas, and each of which also produce superior results from the point of view of equality of voting age population. For the Court's convenience, each of these is set forth on the following pages, and, for the sake of convenience, they will hereafter be referred to as the Delta Plan and the Northern Vertical Plan.

Examining the adopted plan and the Delta Plan and the Northern Vertical Plan statistically to see if equality of population is a significantly unique feature of the adopted plan, we find the difference between the largest and the

RAND McNALLY PLAN ADOPTED BY MISSISSIPPI LEGISLATURE

TATE COUNTY OUTLINE MAP

MISSISSIPPI
SIZE 8½ x 11

TENNESSEE
ARKANSAS
LOUISIANA
ALABAMA
LOUISIANA

CRITTENDEN · SHELBY · FAYETTE · HARDEMAN · HENRY · MARSHALL · BENTON · TIPPAH · ALCORN · TISHOMINGO · MARION · LAUDERDALE · COLBERT · LEE · DE SOTO · TUNICA · TATE · PRENTISS · PHILLIPS · PANOLA · LAFAYETTE · UNION · FRANKLIN · LEE · ITAWAMBA · QUITMAN · PONTOTOC · COAHOMA · MARION · DESHA · SILVAN · TALLAHATCHIE · YALOBUSHA · CALHOUN · CHICKASAW · CHOCTAW · LAMAR · GRENADA · CLAY · CARROLL · MONTGOMERY · WEBSTER · LOWNDES · CHICOT · WASHINGTON · OKTIBBEHA · PICKENS · CHOCTAW · HOLMES · ATTALA · WINSTON · NOXUBEE · EAST CARROLL · MADISON · YAZOO · LEAKE · NESHOBA · KEMPER · SUMTER · MADISON · WARREN · HINDS · RANKIN · SCOTT · NEWTON · LAUDERDALE · TENSAS · SMITH · JASPER · CLARKE · CHOCTAW · CLAIBORNE · COPIAH · SIMPSON · JEFFERSON · WAYNE · CONCORDIA · LINCOLN · LAWRENCE · JEFFERSON DAVIS · COVINGTON · JONES · WASHINGTON · ADAMS · FRANKLIN · LAMAR · FORREST · PERRY · GREENE · MARION · AMITE · PIKE · WALTHALL · WILKINSON · POINTE COUPEE · WEST FELICIANA · EAST FELICIANA · SAINT HELENA · TANGIPAHOA · WASHINGTON · PEARL RIVER · GEORGE · STONE · JACKSON · SAINT TAMMANY · HARRISON · HANCOCK

31 · 13 · 45 · 5th

MISSISSIPPI COUNTIES
Township 42
1960 Populations

Rank	County	Pop.
21	Adams	41,795
75	Alcorn	24,322
74	Amite	13,275
41	Attala	20,818
94	Benton	8,456
14	Bolivar	46,914
44	Calhoun	19,461
77	Carroll	12,627
57	Chickasaw	17,777
67	Choctaw	14,869
9	Claiborne	11,241
23	Clarke	16,653
39	Clay	21,826
4	Coahoma	49,035
46	Copiah	19,241
84	Covington	10,845
16	De Soto	23,100
18	Forrest	35,268
85	Franklin	8,377
78	George	12,167
30	Greene	10,220
24	Grenada	16,637
5	Hancock	31,760
1	Harrison	134,519
10	Hinds	214,677
52	Holmes	21,609
97	Humphreys	9,110
42	Issaquena	2,274
53	Itawamba	17,571
6	Jackson	49,252
26	Jasper	15,826
27	Jefferson	9,740
88	Jefferson Davis	12,487
17	Jones	36,199
45	Kemper	10,743
19	Lafayette	29,744
20	Lamar	15,179
12	Lauderdale	62,349
43	Lawrence	12,274
40	Leake	20,100
54	Lee	37,144
31	Leflore	34,989
11	Lincoln	30,065
36	Lowndes	42,748
56	Madison	37,740
22	Marion	25,595
55	Marshall	30,223
32	Monroe	34,989
38	Montgomery	12,363
61	Neshoba	19,033
62	Newton	18,523
63	Noxubee	16,608
64	Oktibbeha	20,318
65	Panola	25,541
8	Pearl River	38,553
66	Perry	10,339
68	Pike	29,116
69	Pontotoc	17,610
70	Prentiss	17,610
71	Quitman	10,117
72	Rankin	44,232
73	Scott	19,330
28	Sharkey	8,710
29	Simpson	16,536
35	Smith	13,153
7	Stone	8,600
49	Sunflower	34,844
59	Tallahatchie	19,000
60	Tate	18,000
48	Tippah	20,000
47	Tishomingo	19,000
13	Tunica	8,000
50	Union	21,000
51	Walthall	15,000
33	Warren	47,000
3	Washington	67,935
34	Wayne	19,000
37	Webster	12,000
2	Wilkinson	14,000
58	Winston	17,000
25	Yalobusha	13,000
15	Yazoo	30,000

2,178,141 STATE TOTAL

SCALE IN MILES

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This map is also available showing Cities.

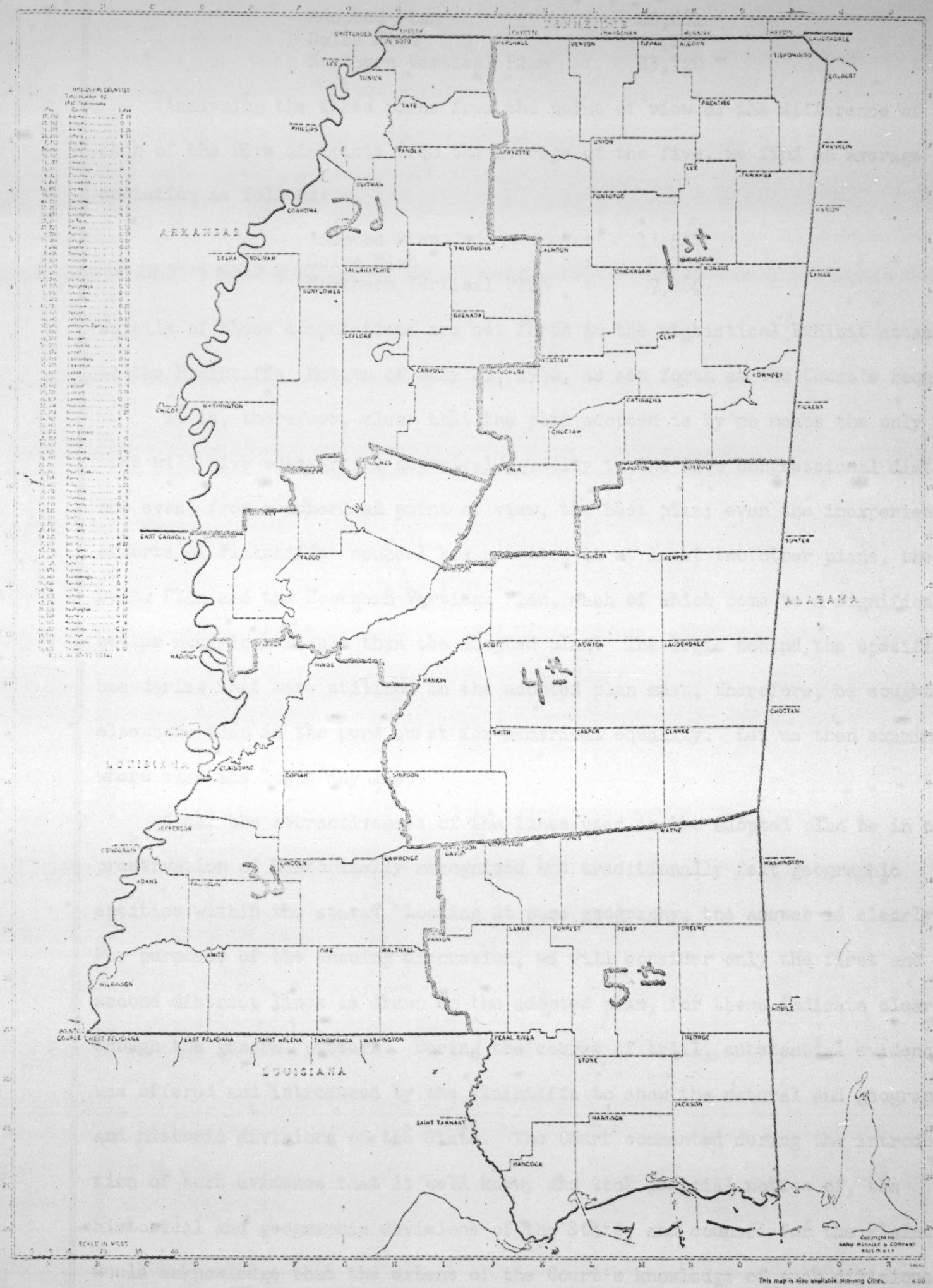
RAND McNALLY

STATE COUNTY OUTLINE MAP

NORTHERN - VERTICAL PLAN

MISSISSIPPI

SIZE 8½ x 11



This map is also available showing Cities.

smallest districts in each plan to be as follows:

Adopted Plan	:	28,061
Delta Plan	:	29,885
Northern Vertical Plan	:	23,740

Analyzing the three plans from the point of view of the difference of each of the five districts from the average of the five, we find an average deviation as follows:

Adopted Plan	:	11,547
Delta Plan	:	8,265
Northern Vertical Plan	:	7,266

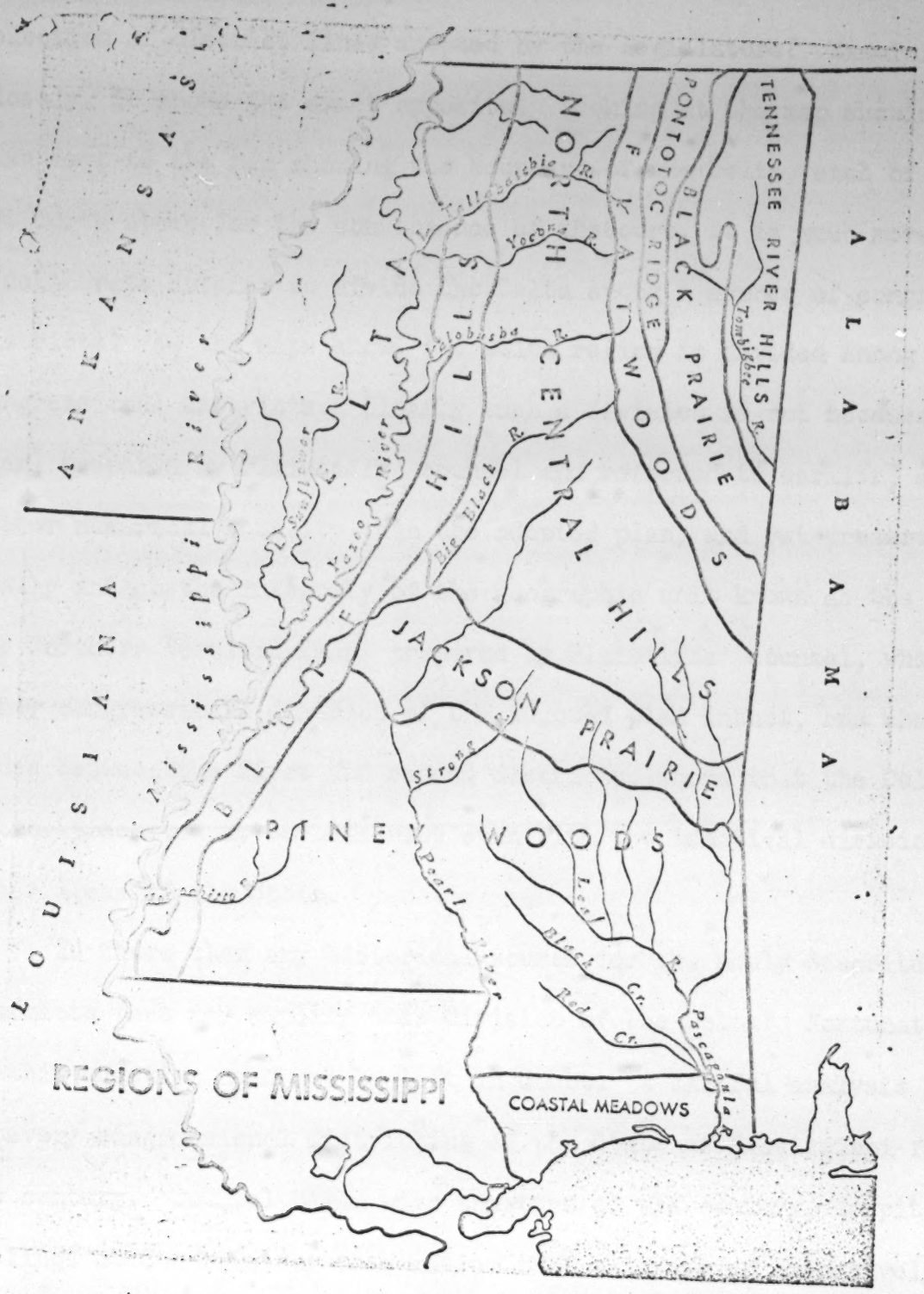
Details of these computations are set forth in the statistical Exhibit attached to the Plaintiffs' Motion of July 25, 1966, as set forth at the Court's request.

It is, therefore, clear that the plan adopted is by no means the only plan that will give substantial numerical equality to the five congressional districts, nor even, from a numerical point of view, the best plan; even the inexperienced efforts of Plaintiffs' counsel has resulted in at least two other plans, the Delta Plan and the Northern Vertical Plan, each of which come to a significantly better numerical result than the adopted plan. The logic behind the specific boundaries that were utilized in the adopted plan must, therefore, be sought elsewhere than in the pure quest for numerical equality. Let us then examine where else its logic may lie.

Could the attractiveness of the lines used in the adopted plan be in their preservation of historically recognized and traditionally felt geographic entities within the state? Looking at pure geography, the answer is clearly no. For purposes of the ensuing discussion, we will consider only the first and second district lines as drawn on the adopted plan, for these indicate clearly enough the general pattern. During the course of trial, substantial evidence was offered and introduced by the Plaintiffs to show the natural and geographic and historic divisions of the State. The Court commented during the introduction of such evidence that it well knew, and took judicial notice of, the historical and geographic divisions of the State, and counsel for the Plaintiffs would acknowledge that the extent of the Court's knowledge of such divisions far exceeds counsel's and probably that of almost any other citizen of the State of Mississippi. To set forth on paper, then, what the Court well knows already, the State of Mississippi is divided into five major areas. These consist of the Delta region, a rich agricultural area lying adjacent to the

Mississippi River and stretching by and large from the Mississippi eastward to the beginning of the Bluff Hills, and lying primarily between the Mississippi and the Yazoo River. It is an area of fertile ground, used over many generations almost exclusively for the growth of cotton, on which the plantation system, once prevalent throughout the South, achieved its greatest flowering. It is set apart as a region through the richness of its soil, the singleness of the crops produced, the unique economic system through which that crop is developed, the presence of the Mississippi River as a common water way and a scenic feature of the entire region, and, historically, by a unity of interest that has projected itself as a united political strength dominating the politics of the State for many generations. These facts are all reflected in the evidence introduced and facts of which this Court took judicial notice; the United States Geodetic Survey Maps in the record clearly show the delineation of the area between the Mississippi and the foot hills of the Central Mountains, a line which has been traced over the Plaintiffs' Statistical Exhibit, a copy of which is set forth on the next page. The reference given the Court; textbooks used in the Mississippi school system, including The Mississippi Story, by McLemore & McLemore, and Mississippi, A History, by Bettensworth, each reflect the same clear concept of the unity of the Delta as a region, and the publications of the Mississippi Industrial Development Commission, particularly its three dimensional topographic map which has been introduced into evidence, show the same thing. The balance of the State then can be defined as being divided into four other major sections: Central Hills extending from the border of the Delta on the west to the Flatwoods area on the east, and running in a broad north south band from the top State to the center; the northeasterly section of the state, including geographically the Flatwoods, Pontotoc Ridge, Black Prairie and Tennessee River Hills sections; the southeastern area, including the Coastal Meadows along the Gulf of Mexico, the Piney Woods north of them; and the southwesterly part of the State, known as the Loess Bluffs. Each of the regions can be traced easily on the United States Geodetic Maps, which give all key topographic features, and they are described in detail in the other references mentioned above.

Having in mind, then, the strong geographic unity of the Delta region of Mississippi, do the geographic features of the State help to explain the



REGIONS OF MISSISSIPPI

17

Taken from The Mississippi Story
By McLemore and McLemore

selection of district lines adopted by the Legislature? Examining it closely, it shows the exact opposite. Looking at the map showing the adopted plan next to the map showing the boundary of the Delta, each of which are set forth above for the convenience of theCourt, it is much more as if there were a deliberate attempt to divide the Delta among a number of congressional districts! As the maps show, the Delta region is divided among four different congressional districts. Clearly such a division is not necessary; the Delta plan, prepared by Plaintiffs' counsel and referred to earlier, achieves even better numerical equality than the adopted plan, and yet preserves substantially intact the integrity of the geographic unit known as the Delta. Even the Northern Vertical Plan, prepared by Plaintiffs' counsel, which leaves every other congressional district of the adopted plan intact, and changes only the lines between the first and second districts, shows that the Delta can be much better preserved as one district even with the identical division among the other areas of the State.

Is there then any historical source for the newly described congressional districts that may explain this division of the Delta? Fortunately, the answer to this question need not be left in doubt. A careful analysis has been made of every congressional districting of the State of Mississippi from the turn of the century. Counsel began with the turn of the century, despite the Court's feelings at the trial of this matter that this was an excessively long period, only because some point of beginning had to be taken. The experience of over sixty consecutive years should be sufficient to either demonstrate or disprove the point. This analysis shows that in <u>every single redistricting</u> from 1894 on, the basic counties of the Delta were kept together in one congressional district! Sometimes the easterly boundary of that district went to the east of the Yazoo River, and on one or two occasions it went to the west; sometimes the southerly boundary included Issaquena county, and sometimes it did not; but at no point in the entire history of the State from 1894 to the present, were the key Delta counties separated from each other in preparing the congressional district lines of the State of Mississippi. An examination, therefore, of history produces no explanation for the present district lines, and rather raises a significant question as to the present deviation from the historical trend of at least seventy consecutive years.

It would be belaboring the obvious to point out that in every other way considered permissible by the Courts in drawing district lines, the Delta area is a unit, and the boundary lines between the first and second district should run in a north-south direction rather than in a east-west direction. Economically, sociologically, historically, geographically, the newly drawn lines distort and mutilate what otherwise appears as natural and obvious, and no single solitary advantage can be shown of the adopted plan over either the Delta Plan or the Northern Vertical Plan, or, undoubtedly, over countless other plans which draw lines taking into account the factors held to be constitutionally permissible by the Court.

No conclusion is left over other than that the discriminatory effect of these lines, as shown graphically by the statistics set forth at the beginning of this section, was the sole and persuasive argument for the drawing of the present lines.

B. The evidence shows affirmatively that the intent and purpose of the Legislature was to achieve precisely the discriminatory results accomplished by the adopted redistricting plan.

While the facts as to the meaning of the redistricting lines adopted by the Mississippi Legislature, in terms of their effect on the Negro vote, speak for themselves, an attempt has nevertheless been made to assemble all of the evidence reasonably available to the Plaintiffs as to the specific intent of the Legislature in acting as it did. What limited evidence is available shows that the racially discriminatory result of the redistricting lines was not accidental, but was in fact the precise objective of the Legislature, and that its only concern was drawing its lines in such a manner that its intent would not be so obvious as to preclude it from having any chance of winning the law-suit which it knew was already pending, when such lines were challenged, as it knew they would be, along the very lines of the present attack.

It should be noted at the outset that we are not dealing here with a normal problem of seeking the legislative intent behind a given statute. The Legislature of the State of Mississippi has had one statute after another passed by it challenged on the grounds of discriminatory racial intent. It has seen courts take judicial notice of the ironclad and uniform policy of segre-gation and discrimination of the State, and one court after another declare void and strike down one act after another of the State of Mississippi. It has

seen its own debates used as evidence of such unconstitutional and improper motivation. Over a period of years, the Legislature of the State of Mississippi has, therefore, become conscious of what may and may not be said on the record in its chambers, and particularly as to such legislation as to which it knew questions of constitutionality clung.

As a result, the Mississippi Legislature has stopped entirely keeping any record of its own debates. Access to its galleries is limited by its own rules to those being admitted at the request of individual members of the Legislature as this Court knows and may notice judicially. What reports were introduced into evidence of the debates of the Legislature are replete with references to the likelihood of litigation on the subject of the discriminatory nature of the present redistricting, and one legislator after another can be found advising his colleagues to talk less about the Negro vote, because they should know what effect such talk might have. Proof of Legislative intent must thus necessarily be based on incomplete accounts and indirect references, and perhaps the phrase "Aesopian language" is in reality the best one to use to describe the manner in which this subject is handled in any discussions in the Mississippi Legislature to which outsiders may be privy. Before turning to what meager evidence is available bearing directly on the intent of the Legislature, the history of actions of the State of Mississippi in the entire area of voting rights should first be examined. The Plaintiffs' have asked the Court to take judicial notice of multitudinous formal lawsuits filed by the Department of Justice and others challenging various acts of discrimination by various local and state authorities within the State of Mississippi. The cumulative results of such past acts of discrimination can be seen by the bare figures; as of 1960, the total percentage of Negroes eligible to vote in the State of Mississippi was only about one-tenth of the percentage of eligible white registered to vote. Even after the Voting Rights Act of 1965, it was necessary for the Department of Justice to place federal registrars in approximately twenty-five percent of the counties within the State of Mississippi in order realistically to give Negroes the formal right to vote in those counties, and the continuing impact of past patterns of discrimination and intimidation still weights heavily as a continuing factor in keeping down the number of Negroes registered to vote. Even as of the date of the trial of this action, the latest current figures showed that the percentage

of registered Negroes eligible to vote was still only about half of the comparable figure for whites. Even so, however, the impact of so many Negroes registered to vote in just the last two years must be a major factor in any assessment of politics in the State of Mississippi today, and it certainly could not escape the attention of a legislature historically acutely aware of the problems of the Negro vote.

In the face of these well known facts, what does the little available direct evidence indicate? First, it indicates a clear awareness by the Mississippi Legislature of the possibilities inherent in the conscious handling of congressional district lines to achieve desired purposes. Already after the 1960 Census, when redistricting was required because of the elimination of a congressional seat from the State because of a reduction in its population, two congressional districts were combined to eliminate an annoyingly liberal congressman, using a procedure described in detail in Frank Smith's Congressman from Mississippi. Secondly, every reported debate on the subject indicates a clear and major concern for the impact of any new proposal on the actual and potential Negro vote. Brief quotations from legislators set forth in the newspaper stories introduced into evidence.show this clearly:

Jackson Daily News,
January 14, 1966: "Did the Negro situation enter in this redistricting plan?" When he got no answer to his question, he said, "we all know the Negro situation was the main factor."

"When this bill is attacked in the courts, they're going to look into what areas were moved, where they were moved and for what purpose they have been moved.
They were moved so there shall not be a majority of certain groups in a district. The courts will consider a similar case and they'll throw this out. We will have congressmen elected at large or by districts fixed by the Supreme Court.
This patently was drawn in a manner to devalue the vote of a certain group of people."

"Backers of the plan did not deny that the Delta area was split up to divide the heavy Negro vote."

Jackson Daily News,
March 7, 1966: "The Bill had a little too much discrimination to be ignored by the courts."

Jackson Clarion Ledger
April 1, 1966: "A plan adopted by the Senate would have given the Second (District) a heavy Negro majority, but the House rejected this in favor of five districts with white majorities. Most senators agree that unless one heavily-Negro majority district is established, the government will knock the redistricting plan out through the federal courts."

Jackson Daily News
April 7, 1966 "Any bill that shows discrimination against a certain race they'll knock down. You are trying to take two white counties in northeast Mississippi out of the 2nd District and put a heavy Negro populated county in. They will say this bill is fraught with discrimination."

Even the statistics themselves tell the story clearly. Using the figures published together with the newspaper report in the Jackson, Mississippi papers covering the passage of the finally adopted plan, the table set forth on the next page summarizes the situation in the district with the largest Negro vote as to each of the plans reported in any detail in the Jackson newspapers. The pattern is clear; starting with a plan in the House of Representatives which provided for no Negro majority in any congressional district in a State with a forty-two percent Negro population, and a white majority of over 15,000 even in the district with the heaviest Negro vote, we find next a Senate plan introduced which shows at least a paper Negro majority of over 82,000 in one district. From these two positions, the steps toward the finally adopted compromise are clear: the House gives up its extreme position of insisting on no Negro majority of any kind in any district whatsoever, and the Senate in return agrees that its bow in the direction of a fairness which the Courts may uphold is unnecessarily deep, until finally a compromise is worked out which satisfies the House's desire to exclude absolutely any possibility of an effective Negro vote in any county, and also satisfies the Senate's more conservative feeling that the opinions of a federal court should after all be respected sufficiently to have some semblence of a defense available when the challenge it knew was coming would be aired. That race was the single most important factor in arriving at this compromise, can be seen as much from the Senate's repeated insistence that it was not so and that its motives were indeed nothing but honorable, as from the House's repeated and defiant insistence on stating its intentions without subterfuge or pretense.

THE AMOUNT OF THE WHITE OR NON-WHITE MAJORITY IN THE DISTRICT WITH THE HIGHEST PERCENTAGE OF NON-WHITES**

SENATE PLANS:

Introduced Died in Senate Committee	February 1, 1966	FOSTER PLAN (S.B. 1754)	82,204 nonwhite majority
Passed by Senate	February 15, 1966	ALEXANDER PLAN (S.B. 1739)	40,526 nonwhite majority
Passed by Senate	April 7, 1966	SENATE PLAN OF APRIL 7, 1966 (Amendment No. 2 to H.B. 911)	14,229 nonwhite majority

HOUSE PLANS:

Passed by House	January 13, 1966	WILLIAMS PLAN (H.B. 63)	15,852 white majority
Passed by	April 6, 1966	HOUSE PLAN OF APRIL 6, 1966 (Amendment No. 1 to H.B. 911)	3,116 white majority

ADOPTED PLAN:

Passed by Both Houses Signed by Acting Governor	April 7, 1966	1,819 nonwhite majority

**

1. All figures are based on the statistics published in the Jackson Clarion Ledger, April 8, 1966 Edition.
2. The plans included are all plans for which maps were published in the Jackson newspapers.
3. The plans that have a district with a nonwhite majority have only one district with a nonwhite majority.

Method Used In Compilation:
The statistics published in the Jackson Clarion Ledger, April 8, 1966 edition include total white and total nonwhite population for each district. The majority reported in the above chart is the difference between the two statistics.

One further item of evidence introduced is very revealing on the question of legislative intent. In the Jackson newspaper which reported the passage of the finally adopted Reapportionment Bill, a table was printed next to the redistricting map, showing figures by county for Negro and white population and Negro and white voting age population. These figures do not accord with the United States Census for the same subject; they appear to be more recent, but thei precise origin is neither known nor relevant. What is relevant about them is that the editor of the newspaper testified that they were delivered to the paper from the Legislature, together with the report of the passage of the act itself, by the paper's correspondent at the Legislature, and from the manner in which they were handled, there is no doubt but that they were considered to be the most significant figures on the basis of which to judge the redistricting plan. The fact that the Negro - white breakdown is openly and prominently featured, is, of course, a further indication of the prominence of this factor in the legislature's thinking. Even more significant, however, is the fact that these figures, apparently the ones actually used by the legislature, show that in no district is there a Negro voting age population, and, quite to the contrary, there is a safe plurality of white voters of 32,581 in the first congressional district, the district in which there is the heaviest Negro concentration.

Putting together the pluralities by congressional district on the same basis as used on page 3 of this Brief, the results the Legislature intended and expected to get are clear:

First	District	White Majority	32,581
Second	District	White Majority	69,772
Third	District	White Majority	52,632
Fourth	District	White Majority	54,767
Fifth	District	White Majority	143,923

No clearer statement of the common knowledge and understanding of what was involved in the redistricting scheme could be given than that elicited by the Court itself from Mr. McLauren, the Chairman of the Mississippi Freedom Democratic Party's Congressional Campaign Committee. Mr. McLauren precisely and pointedly testified that it was the obvious intent of the Legislature to create a situation in which the right of the Negro to vote would be effectively wiped out. Perhaps most damning of all is the Defendants own handling of the issues of fact in this case. The Governor of the State of Mississippi, its Attorney-General, its Secretary of State, and the leaders of both its House of Representatives and its Senate, representing all members of those two august bodies, were Defendants in this action. They were specifically accused, in the Amended Complaint that was filed against them, of having an improper intent, in the following language:

> "The intent, purpose, and necessary effect of such new plan was and is to create congressional districts with such boundaries as to dilute and in all likelihood render ineffective the right to vote of the individual Plaintiffs and the class they represent in elections for members of the United States House of Representatives for Mississippi." (Par. 5(j))
>
> "The intent, purpose and necessary effect of such new plan will further be in all likelihood, to deny to the plaintiff, Mississippi Freedom Democratic Party and its members and candidates a fair opportunity to vote and to elect candidates to the United States House of Representatives for the State of Mississippi." (Par. 5(l))

Testimony by them denying such allegations would certainly be expected, if only for the record, from their point of view. One of the most significant features of the trial of this action was the absolute lack of presentation by the Defendants of any evidence or testimony whatsoever on the question of legislative intent. Certainly there could be no question as to the relevance or importance if such testimony were introduced; not only is the intent and purpose of the Legislature a significant factor in judging a challenge to redistricting such as this, and not only is the importance of this factor spelled out in a number of decisions of the United States Supreme Court, but even more, a specific allegation to this effect was included in the Plaintiffs Amended Complaint, as well as in its original Complaint.

And further, if there was any doubt in the Defendants minds as to the importance which this question of legislative intent would have in the case, it was dispelled by a review of the Plaintiffs testimony on the trial of the matter, and the Defendants had ten days thereafter to take depositions. In the face of all this, the absence of any testimony or any evidence whatsoever from the Defendants on the actual legislative intent clearly gives rise to a reasonable inference that the allegations of the complaint are correct, and that the testimony introduced by the Plaintiffs, standing entirely uncontradicted, is entitled to complete and unqualified acceptance.

IV. JUDICIAL PRECEDENTS INDICATE CLEARLY THE UNCONSTITUTIONALITY OF THE ADOPTED PLAN.

We have thus far reviewed the evidence that was introduced in this case, and have found that the uncontradicted evidence indicates clearly that the plan of congressional redistricting adopted by the Mississippi Legislature will, both on paper and in practical effect, render absolutely ineffective the hard-won right of Negroes to vote in the State. There is no doubt that this result was clearly in the view of the Legislature when it adopted the present plan, and that at least two and undoubtedly more alternative plans could easily have been prepared which would obtain even greater numerical equality among the districts, reflect more clearly the natural geographic, historical, and economic areas of the State, and at the same time permit a fairer representation to be accorded to the Negro citizens of Mississippi. Under such circumstances is this court either permitted or required to set aside the plan adopted by the Legislature ? The Plaintiffs believe so.

The leading case on racial gerrymandering is Gomillion v. Lightfoot, 364 US 339, 5 Led 2nd 110, 81 S Ct. 125.

In that case, the City Council of the City of Tuskegee redrew the city lines so as to exclude the part of the community surrounding Tuskegee University from the municipality. The result of this was to render ineffective, by exclusion, the vote of the Negroes living in the excluded areas. Commenting on the allegations setting this forth, the Supreme Court said:

> "The petitioners here complain that affirmative legislative action deprives them of their votes and the consequent advantages that the ballot affords. When a legislature thus singles out a readily isolated segment of a racial minority for special discriminatory treatment, it violates the Fifteenth Amendment."

> "According to the allegations here made, the Alabama Legislature has not merely redrawn the Tuskegee city limits with incidental inconvenience to the petitioners; it is more accurate to say that it has deprived the petitioners of the municipal franchise and consequent rights and to that end it has incidentally changed the city's boundaries. While in form this is merely an act redefining metes and bounds, if the allegations are established, the inescapable human effect of this essay in geometry and geography is to despoil colored citizens, and only colored citizens, of their theretofore enjoyed voting rights." (364 US 346-347)

Thus there can be no doubt that racial gerrymandering is per se unconstitutional.

Even in cases in which the question of racial gerrymandering was raised but the finding was against the Plaintiffs on the facts, the Supreme Court has reiterated its absolute prohibition against racial gerrymandering. In Wright v. Rockefeller, 376 US 52, 11 L ed 2nd 512, 84 S Ct 603, for instance, the Court took it for granted that if "the New York Legislature was either motivated by racial considerations or in fact drew the districts on racial lines," their actions would have been in violation of the equal protection and due process clauses of the 14th Amendment and in violation of the 15th Amendment. (376 US 56)

There is an entirely different line of cases involving reapportionment problems that would as clearly indicate the unconstitutionality of the Mississippi Legislature's adopted plan as the racial gerrymandering cases, and without even the necessity of any specific findings as to the Legislature's intent. This is the line of cases which discuss plans which do not have the result, taken as a whole, of fairly reflecting the population of the state. By and large they involve the use of multi-member districts in combination with single member districts in a single plan of apportionment. The question that is raised in each case is whether the effect (regardless of the intent) of the establishment of multi-member districts is to render ineffective the votes of groups that are minorities within a multi-member district but would be majorities in districts separately constituted, in which case such plans have been struck down, or whether, on the contrary, the total result of the use of multi-member districts in combination with single member districts is to create an assembly fairly representative of the electorate as a whole, in which case such a deviation from uniformity is permitted.

In Holt v. Richardson, 24 F Supp 724, for instance, the court states that, in establishing a reapportionment plan for Hawaii, "not only must the electoral districts be laid out with the totality of . . . factors having been

taken into consideration, but even more, the sum total of all of the districting must result in substantial equality of meaningful representation to each and all of the voters of the state." (at 730) See also Maryland Committee for Fair Representation vs. Tawes, 377 US 656, at 673, 84 S Ct 429 at 1438, 12 L ed. 2nd 595.

In Fortson vs. Dorsey, 379 US 433, 13 L ed 2nd 401, 85 S Ct 498, the racial question was specifically commented upon by the Supreme Court in saying that:

> "It might well be that designedly or otherwise, a multi-member constituency apportionment scheme, under the circumstances of a particular case, would operate to minimize or cancel out the voting strength of racial or political elements of the voting population." (at 405)

Using the same reasoning here, any plan of congressional districting that would result in a congressional delegation from Mississippi elected from districts in which Negroes have no effective chance of electing a member is unconstitutional, certainly where there is no other overbearing reason to achieve this result. If for instance Negroes constituted forty-two percent of the population of every county, so that it would be absolutely impossible to create a congressional district with a majority of Negroes, or even if the facts were such that basic considerations of economics or history or geography would lead it to create only districts in which Negroes were a minority, there might at least be an argument for the constitutionality of the plan. Where, however, as here, every reason of geography, history and economics combine with elementary racial fairness to require a plan producing a congressional delegation with at least one congressman from a predominately Negro District, and a plan is actually adopted that precludes exactly that result, its unconstitutionality is apparent.

V. THE DEFENDANTS' OBJECTIONS TO THE ADMISSIBILITY OF CERTAIN OF THE PLAINTIFFS' TESTIMONY SHOULD BE OVERRULED.

During the course of the trial, the Defendants objected to the admission of certain items of evidence by the Plaintiffs, and the Court reserved its ruling on such objections, asking for discussion of the relevant law in briefs to be filed subsequent to the hearing. Further objections were raised by the Defendants by motions subsequent to the conclusion of the presentation of testimony in the action.

The first group of objections raised by the Defendants relate to newspaper articles introduced by the Plaintiffs. Without repeating the detail statement of the difficulties in obtaining accurate evidence of what transpired during the legislative debates on the present plan of redistricting, which are discussed in detail in Section III b of this Brief, suffice it to point out that both the Clerk of the Mississippi House of Representatives and the Clerk of the Mississippi Senate testified that no official records of any nature were available as to the debates in their respective chambers, and that all the records that are available were introduced into evidence under subpoena by the Plaintiffs. It is, of course, obvious that the testimony of members of the Legislature themselves could provide only partial assistance, and all of them were named as Defendants in this action. Had their testimony been reliable or accurate and favorable to the Defendants, no doubt they would have called at least some members of the Legislature as witnesses; this, however, they failed absolutely to do. Because of the unavailability of other evidence on the point, therefore, newspaper reports were introduced into evidence. Testimony in each case in support of the newspaper stories was given by both the editors of the papers involved, testifying as to the high standards maintained in their coverage of news, and their devotion to accuracy and impartiality, and testimony of the reporters actually writing the majority of the stories were introduced testifying that they were based on their own information and were accurate to the best of their ability when written.

In view of this substantial foundation, it is difficult to see on what basis the Defendants could object to the admission of this evidence. It is not hearsay; it is not being introduced to prove the truth of what is reported, but only to place into evidence the verbal evidence itself, that is, the very fact of

discussion and debate on the racial implications of the plan of redistricting. If it were hearsay, which it is not, it would come under the exception to the hearsay rule for admission against interest, since the testimony is that of Defendants themselves.

There are cases specifically on point. In N.A.A.C.P. vs. Patty 159 F Supp 503 Eastern District, Virginia 1958, for instance, the Court states in commenting on the admission of newspaper articles as evidence:

> "They are received over objections by the Defendants only as evidence of this fact (that the proposed integration of the schools was a prime subject of public interest and discussion all over the state) and not to prove the accuracy of the statements contained therein."

In Hall vs. St. Helena Parish School Board, 197 F Supp 649 1961, affirmed 368 US 515, the Court states at footnote 8:

> "In Louisiana as in most states the Legislative debates, committee proceedings, and committee reports are not recorded officially. Going to the next best records, newspapers, we find in the record of this case a mass of contemporary newspaper articles, filed by the Plaintiffs and by amicus curiae, bearing on the legislative history of Act 2 and its related measures. Affidavits from the authors of the articles attest their accuracy."

In U.S. v. Louisiana, 225 F Supp 353 (E.D) Louisiana, 1963, affirmed 380 US 145, the Court states:

> "The United States introduced a large number of certified copies of newspaper articles of the period. The newspaper articles are admissible to show purpose."

For other cases commenting on the admissibility of similar items, see Dombrowski v. Pfister, 227 F. Supp. 556 (E.D. La. 1964) and Davis et al v. Schnell 81 F. Supp. 872, S.D. Ala. 1949, Aff'd per curiam 336 U.S. 933.

The Defendants further object by motion to the admission of "one item produced by J. Nicholas Flannery, Esquire, at the deposition taken by the Plaintiffs on July 22, 1966" on two grounds set forth in that motion; first, that the item is not and does not purport to be an accurate record of certain statistics, and that it was not prepared by or under the supervision and direction of the party offering the item. The first objection can be quickly disposed of by simply pointing out that an objection that something is not what it does not purport to be is no objection to its admissibility; if it were not something that it did purport to be, the objection might be more relevant. As to the second objection, the transcript of the deposition itself indicates in great detail the exact manner in which the statistics were derived, and further indicates the absolute absence of any more accurate current statistics available to the Plaintiffs.

Certainly the items submitted by the Defendants in the alternative in said motion, being affidavits from clerks and registrars of the eighty-two counties of the State, are much more objectionable in manner of offer into evidence and in substance than the Plaintiffs evidence. They do not indicate the nature of the official records from which the facts stated therein are taken; they do not state those duties of the affiants in connection with which such statistics are maintained; they do not state the manner in which the records from which the figures stated in such affidavits are taken are maintained, what measures are taken to ensure their accuracy, what measures are taken to remove from them the names of voters who have deceased or moved from the county, and what measures are otherwise taken to check the accuracy thereof; they contain information which is irrelevant to any of the issues in this case, since they contain only total figures and provide no breakdown of such figures by race or color; although other evidence has been introduced indicating that accurate information is available as to the breakdown by race and color of the figures given in the Defendants affidavits, such affidavits make no reference to any other sources of such information whatsoever; the Plaintiffs have not had the opportunity to cross examine any of the affiants on any of the matters or on any related matters that may arise during the course of their direct examination or cross examination. Beyond all this, none of such certificates or affidavits were subject to cross examination by the Plaintiffs, as was all of the testimony introduced by Mr. Flannery.

In the interest of providing the Court with as full, complete and accurate information as is available, however, the Plaintiffs, if the Exhibit offered by Mr. Flannery is accepted into evidence, would not object to the admission into evidence of the certificates and affidavits of the Defendants, for what little relevance they may have to the issues in this matter.

The issues raised by the second paragraph of the Defendants' motion, objecting to the admissibility of evidence, relates to the items described in paragraph 3 of the Plaintiffs' Motion of July 25, 1966, being various computations and sketches prepared by Michael Krinsky at the request of Plaintiffs' counsel.

The issue is not worth pressing; there is no matter of "new evidence" contained in Mr. Krinsky's summaries, but only computations based on statistics already in evidence, and lines drawn on regular maps of the State of Mississippi

setting forth various district lines under alternative plans for the convenience of the Court. Whether this Exhibit be considered to have been admitted into evidence, or be considered to be an appendix to the Plaintiffs' Brief, its importance is only in that it shows in more convenient and perhaps graphic form certain information already properly admitted into evidence otherwise.

VI. CONCLUSION.

The inescapable conclusion to be drawn from all of the facts and evidence, and facts of which this Court may take judicial notice, are inescapable. The Legislature of the State of Mississippi was faced, since 1962, with a quandary caused by the coincidence of two facts: First, that the Supreme Court had decided that it would take jurisdiction over challenges to congressional districts based on inequality of population, and order redistricting itself where a state did not undertake such redistricting itself voluntarily; and second, that, through decisions of the courts and finally the direct intervention of the United States Congress, the proportion of Negro voters in the State of Mississippi was rising sharply. If, therefore, the Legislature of the State of Mississippi should itself voluntarily undertake a normal redistricting of its congressional lines, it faced the necessity of creating at least one congressional district in which the Negro vote either already would be, or shortly would become preponderant. This the Mississippi Legislature was determined not to permit.

Three approaches to the problem were developed by the Legislature. The first was simply to do nothing. During the entire preceding session of the Legislature, this is exactly what it did, and it made its bow in the direction of compliance with Supreme Court decisions by only appointing an interim Legislative Committee on Reapportionment. The second approach was the one recommended by that interim committee to this Legislature, such recommendation now being clearly required because of the institution of the present lawsuit in the Fall of 1965, and indications from this Court to the Legislature that it would act if the Legislature did not. The second approach recommended by the interim committee was, therefore, to adopt a plan of redistricting gerrymandered in such an outrageous way that there would not only be no Negro majority in any district, but that the white majority in the district with the greatest Negro concentration would be as high as 15,852. The third alternative, and the one initially recommended in several bills introduced into the State Senate, was a

much more sophisticated version of the second approach: that is, also to draw district lines in such a way as to preclude any realistic threat from the Negro vote, but nevertheless still preserving a paper semblance of equality by permitting a significant Negro majority of total population to be present in one district. The final outcome was a compromise between the sophisticated form of racial gerrymandering suggested in the Senate and the crude form suggested in the House: a plan which produced a very slight paper majority of total Negro population, but an absolute certainty of preserving white rule in every district in the state. This is the clear effect of the plan adopted, and without any further evidence should be held unconstitutional as direct racial discrimination under the prevailing cases.

Were there any doubt whatsoever of the racial character of the plan adopted, the available evidence clearly indicate a direct, specific and conscious intent and purpose on the part of the Legislature to discriminate against Negro voters. Newspaper articles and the testimony of witnesses bear this out, and not one shred of evidence of any other purpose in the redistricting was introduced. The lines themselves on their face show a total lack of legitimate relationship of the plan to any permissible considerations: no geographic, economic, social or historic reason would lead to a division of the Delta among separate congressional districts, and as a matter of fact the entire history of the state would lead to a diametrically different plan of redistricting. Several such different plans have been suggested by plaintiffs' counsel, and no doubt many others are available, any one of which would provide at least numerical comparability among the congressional districts, and any of which would have a far closer relationship to the legitimate realities of Mississippi life.

It is therefore respectfully submitted that this Court has no alternative but to declare unconstitutional and void the plan adopted by the Legislature of the State of Mississippi, because of its clear effect and purpose to discriminate racially, and to see that a new plan in accordance with the requirements of the Constitution of the United States be adopted.

RESPECTFULLY SUBMITTED :

THE PLAINTIFFS

By Peter Marcuse

Peter Marcuse

State of Mississippi

Office of Secretary of State
Jackson

I, Heber Ladner, Secretary of State of the State of Mississippi, do hereby certify that the within and attached is a true and correct copy of THE POPULATION OF THE COUNTIES OF THE STATE OF MISSISSIPPI ACCORDING TO THE 1960 CENSUS OF POPULATION AS FILED IN THIS OFFICE BY THE BUREAU OF THE CENSUS, U. S. DEPARTMENT OF COMMERCE, WASHINGTON, D. C.

the original of which is now a matter of record in this office.

Given under my hand and Seal of Office this the 30th day of June, 1966

Heber Ladner

Secretary of State

C-26

Exhibit "B"

1960 Census of Population

ADVANCE REPORTS

FINAL POPULATION COUNTS

November 7, 1960 PC(A1)-26

Mississippi

(These figures supersede the preliminary counts for the same areas published in the PC(P1) and PC(P2) series of reports. The present series consists of 52 reports--one each for the United States, 50 States, and the District of Columbia--which are numbered in alphabetical order rather than in order of publication)

The official population count of the State as of April 1, 1960, was 2,178,141. This is a loss of 773, or less than 0.1 percent, from the 2,178,914 inhabitants of the State in 1950.

This report presents final 1960 Population Census statistics on the number of inhabitants of the State and its counties or comparable areas. In addition, figures are given for minor civil divisions, incorporated or unincorporated places, and for the population of the State and its counties classified by urban-rural residence. Comparable figures from earlier censuses appear in Volume I of the reports of the 1950 Census of Population.

The figures shown here are being issued in advance of their publication in Final Report PC(1)-26A, which will provide additional information on the number and geographic distribution of the inhabitants of this State. The final report will be issued within the next few months.

An outline of the 1960 Population Census publication program may be obtained free of charge from the Bureau of the Census, Washington 25, D.C., or any U.S. Department of Commerce Field Office.

Urban-rural residence.--According to the definition adopted for use in the 1960 Census, the urban population comprises all persons living in (a) places of 2,500 inhabitants or more incorporated as cities, boroughs, villages, and towns (except towns in New England, New York, and Wisconsin); (b) the densely settled urban fringe, whether incorporated or unincorporated, of urbanized areas (see next paragraph); (c) towns in New England and townships in New Jersey and Pennsylvania which contain no incorporated municipalities as subdivisions and have either 25,000 inhabitants or more or a population of 2,500 to 25,000 and a density of 1,500 persons or more per square mile; (d) counties in States other than the New England States, New Jersey, and Pennsylvania that have no incorporated municipalities within their boundaries and have a density of 1,500 persons or more per square mile; and (e) unincorporated places of 2,500 inhabitants or more. The population not classified as urban constitutes the rural population.

Urbanized areas.--An urbanized area contains at least one city of 50,000 inhabitants or more and the surrounding closely settled area, whether incorporated or unincorporated, that meets specified criteria relating to land

U.S. DEPARTMENT OF COMMERCE, Frederick H. Mueller, *Secretary*
BUREAU OF THE CENSUS, Robert W. Burgess, *Director*

For sale by the Bureau of the Census, Washington 25, D.C., and U.S. Department of Commerce Field Offices. 15 cents. Complete set of 52 reports, $6.25.

use or population density. There are a few urbanized areas where there are "twin central cities" that have a combined population of at least 50,000.

Minor civil divisions.--To the primary political divisions into which counties or comparable areas are divided, the Bureau applies the general term "minor civil divisions." From State to State they are known variously as townships, towns, judicial districts, election precincts, and the like. In some States, incorporated places are minor civil divisions in their own right and in other States they are subordinate to the minor civil division in which they are located, or the pattern is mixed--some incorporated places are independent minor civil divisions, and others are subordinate to the minor civil division.

Places.--The term "place" as used in reports of the population censuses refers to a concentration of population, regardless of the existence of legally prescribed limits, powers, or functions. Most of the places listed are incorporated as cities, towns, villages, or boroughs, however. In addition, unincorporated places of 1,000 inhabitants or more are also presented. The towns in New England and townships in New Jersey and Pennsylvania recognized as urban are also counted as places.

Incorporated places.--Political units recognized as incorporated places in the reports of the census are those which are incorporated as cities, boroughs, towns, and villages with the exception that towns are not recognized as incorporated places in the New England States, New York, and Wisconsin.

Unincorporated places.--As in the 1950 Census, the Bureau has delineated boundaries for densely settled population centers without corporate limits. All such places of 1,000 inhabitants or more are shown in tables 2 and 3.

Table 1.--POPULATION OF COUNTIES, URBAN AND RURAL: 1960

(Percent not shown where less than 0.1)

County	Total population	Urban				Rural		
		Total	Percent of total population	Urbanized areas	Other urban territory	Total	Places of 1,000 to 2,500	Other rural territory
THE STATE	2 178 141	820 805	37.7	147 480	673 325	1 357 336	111 080	1 246 256
ADAMS	37 730	23 791	63.1	...	23 791	13 939	...	13 939
ALCORN	25 282	11 453	45.3	...	11 453	13 829	...	13 829
AMITE	15 573	...	...	...	...	15 573	1 663	13 910
ATTALA	21 335	6 800	31.9	...	6 800	14 535	...	14 535
BENTON	7 723	...	...	...	...	7 723	...	7 723
BOLIVAR	54 464	10 172	18.7	...	10 172	44 292	8 139	36 153
CALHOUN	15 941	...	...	...	...	15 941	3 412	12 529
CARROLL	11 177	...	...	...	...	11 177	...	11 177
CHICKASAW	16 891	5 199	30.8	...	5 199	11 692	...	11 692
CHOCTAW	8 423	...	...	...	...	8 423	1 382	7 041
CLAIBORNE	10 845	2 861	26.4	...	2 861	7 984	...	7 984
CLARKE	16 493	...	...	...	...	16 493	3 156	13 337
CLAY	18 933	8 550	45.2	...	8 550	10 383	...	10 383
COAHOMA	46 212	21 105	45.7	...	21 105	25 107	1 029	24 078
COPIAH	27 051	7 896	29.2	...	7 896	19 155	1 157	17 998
COVINGTON	13 637	...	...	...	...	13 637	1 537	12 100
DE SOTO	23 891	...	...	...	...	23 891	1 898	21 993
FORREST	52 722	38 996	74.0	...	38 996	13 726	...	13 726
FRANKLIN	9 286	...	...	...	...	9 286	1 185	8 101
GEORGE	11 098	...	...	...	...	11 098	1 977	9 121
GREENE	8 366	...	...	...	...	8 366	1 014	7 352
GRENADA	18 409	7 914	43.0	...	7 914	10 495	1 491	9 004
HANCOCK	14 039	5 073	36.1	...	5 073	8 966	1 106	7 860
HARRISON	119 489	92 505	77.4	...	92 505	26 984	1 577	25 407
HINDS	187 045	150 918	80.7	147 480	3 438	36 127	2 587	33 540
HOLMES	27 096	5 456	20.1	...	5 456	21 640	...	21 640
HUMPHREYS	19 093	4 142	21.7	...	4 142	14 951	...	14 951
ISSAQUENA	3 576	...	...	...	...	3 576	...	3 576
ITAWAMBA	15 080	...	...	...	...	15 080	1 706	13 374
JACKSON	55 522	34 029	61.3	...	34 029	21 493	3 334	18 159
JASPER	16 909	...	...	...	...	16 909	2 593	14 316
JEFFERSON	10 142	...	...	...	...	10 142	1 626	8 516
JEFFERSON DAVIS	13 540	...	...	...	...	13 540	1 321	12 219
JONES	59 542	32 481	54.6	...	32 481	27 061	...	27 061
KEMPER	12 277	...	...	...	...	12 277	...	12 277
LAFAYETTE	21 355	8 880	41.6	...	8 880	12 475	...	12 475
LAMAR	13 675	...	...	...	...	13 675	3 722	9 953
LAUDERDALE	67 119	49 374	73.6	...	49 374	17 745	...	17 745
LAWRENCE	10 215	...	...	...	...	10 215	1 432	8 783
LEAKE	18 660	...	...	...	...	18 660	2 442	16 218
LEE	40 589	17 221	42.4	...	17 221	23 368	1 685	21 683
LEFLORE	47 142	20 436	43.3	...	20 436	26 706	1 914	24 792
LINCOLN	26 759	9 885	36.9	...	9 885	16 874	...	16 874
LOWNDES	46 639	24 771	53.1	...	24 771	21 868	...	21 868
MADISON	32 904	9 707	29.5	...	9 707	23 197	...	23 197
MARION	23 293	7 117	30.6	...	7 117	16 176	...	16 176
MARSHALL	24 503	5 621	22.9	...	5 621	18 882	...	18 882
MONROE	33 953	12 924	38.1	...	12 924	21 029	719	20 310
MONTGOMERY	13 320	4 282	32.1	...	4 282	9 038	...	9 038
NESHOBA	20 927	5 017	24.0	...	5 017	15 910	102	15 808
NEWTON	19 517	3 178	16.3	...	3 178	16 339	2 964	13 375
NOXUBEE	16 826	...	...	...	...	16 826	2 432	14 394
OKTIBBEHA	26 175	9 041	34.5	...	9 041	17 134	...	17 134
PANOLA	28 791	3 284	11.4	...	3 284	25 507	3 170	22 337
PEARL RIVER	22 411	7 834	35.0	...	7 834	14 577	2 136	12 441
PERRY	8 745	...	...	...	...	8 745	1 089	7 656
PIKE	35 063	12 020	34.3	...	12 020	23 043	5 611	17 432
PONTOTOC	17 232	...	...	...	...	17 232	2 108	15 124
PRENTISS	17 949	3 480	19.4	...	3 480	14 469	1 008	13 461
QUITMAN	21 019	2 572	12.2	...	2 572	18 447	1 491	16 956
RANKIN	34 322	5 081	14.8	...	5 081	29 241	3 205	26 036
SCOTT	21 187	3 917	18.5	...	3 917	17 270	2 260	15 010
SHARKEY	10 738	...	...	...	...	10 738	1 619	9 119
SIMPSON	20 454	...	...	...	...	20 454	3 985	16 469
SMITH	14 303	...	...	...	...	14 303	1 132	13 171
STONE	7 013	...	...	...	...	7 013	1 591	5 422
SUNFLOWER	45 750	6 714	14.7	...	6 714	39 036	6 838	32 198
TALLAHATCHIE	24 081	2 528	10.5	...	2 528	21 553	...	21 553
TATE	18 138	3 259	18.0	...	3 259	14 879	1 264	13 615
TIPPAH	15 093	2 668	17.7	...	2 668	12 425	...	12 425
TISHOMINGO	13 889	...	...	...	...	13 889	2 010	11 879
TUNICA	16 826	...	...	...	...	16 826	2 470	14 356
UNION	18 904	5 151	27.2	...	5 151	13 753	...	13 753

Table 1.--POPULATION OF COUNTIES, URBAN AND RURAL: 1960--Con.

(Percent not shown where less than 0.1)

County	Total population	Urban				Rural		
		Total	Percent of total population	Urbanized areas	Other urban territory	Total	Places of 1,000 to 2,500	Other rural territory
WALTHALL	13 512	...	...	...	...	13 512	1 532	11 980
WARREN	42 206	29 143	69.0	...	29 143	13 063	...	13 063
WASHINGTON	78 638	52 959	67.3	...	52 959	25 679	...	25 679
WAYNE	16 258	3 892	23.9	...	3 892	12 366	...	12 366
WEBSTER	10 580	...	...	...	...	10 580	1 468	9 112
WILKINSON	13 235	...	...	...	...	13 235	2 791	10 444
WINSTON	19 246	5 066	26.3	...	5 066	14 180	...	14 180
YALOBUSHA	12 502	3 206	25.6	...	3 206	9 296	...	9 296
YAZOO	31 653	11 236	35.5	...	11 236	20 417	...	20 417

Table 2.--POPULATION OF COUNTIES, BY MINOR CIVIL DIVISIONS: 1960

("U" denotes an unincorporated place. Total population of a place located in 2 or more minor civil divisions appears in table 3)

County and minor civil division	Population
ADAMS COUNTY	37 730
BEAT 1	14 092
NATCHEZ CITY (PART)	10 884
BEAT 2	1 313
BEAT 3	1 458
BEAT 4	15 840
NATCHEZ CITY (PART)	12 907
BEAT 5	5 027
ALCORN COUNTY	25 282
BEAT 1	9 549
CORINTH CITY (PART)	7 510
BEAT 2	3 639
BEAT 3	2 660
RIENZI TOWN	375
BEAT 4	7 557
CORINTH CITY (PART)	3 943
KOSSUTH VILLAGE	178
BEAT 5	1 877
AMITE COUNTY	15 573
BEAT 1	3 921
LIBERTY TOWN	642
BEAT 2	1 714
CENTREVILLE TOWN (PART)	294
BEAT 3	4 818
CROSBY TOWN (PART)	309
GLOSTER TOWN	1 369
BEAT 4	2 633
BEAT 5	2 487
ATTALA COUNTY	21 335
BEAT 1 KOSCIUSKO	12 375
ETHEL TOWN	566
KOSCIUSKO CITY	6 800
BEAT 2 LIBERTY CHAPEL	1 890
MC COOL TOWN	211
BEAT 3 ZILPHA	1 506
BEAT 4 NEWPORT	4 148
SALLIS TOWN	223
BEAT 5 CENTER	1 416
BENTON COUNTY	7 723
BEAT 1	1 306
BEAT 2	2 124
BEAT 3	2 100
ASHLAND VILLAGE	309
BEAT 4	760
BEAT 5	1 433
HICKORY FLAT VILLAGE	344
BOLIVAR COUNTY	54 464
BEAT 1	3 753
GUNNISON TOWN	448
BEAT 2	12 334
BENOIT TOWN	453
BEULAH TOWN	421
PACE TOWN (PART)	...
ROSEDALE CITY	2 339
BOLIVAR COUNTY--CON.	
BEAT 3	10 812
ALLIGATOR TOWN	227
DUNCAN TOWN	465
MOUND BAYOU TOWN (PART)	786
SHELBY CITY	2 384
WINSTONVILLE VILLAGE	327
BEAT 4	19 112
CLEVELAND CITY	10 172
MERIGOLD TOWN	602
MOUND BAYOU TOWN (PART)	568
PACE TOWN (PART)	420
BEAT 5	8 453
BOYLE TOWN	848
SHAW TOWN	2 062
CALHOUN COUNTY	15 941
BEAT 1	3 625
BIG CREEK VILLAGE	100
CALHOUN CITY TOWN	1 714
PITTSBORO VILLAGE	205
BEAT 2	3 816
BRUCE TOWN (PART)	1 213
BEAT 3	2 756
BRUCE TOWN (PART)	485
BEAT 4	2 182
SLATE SPRINGS VILLAGE	123
BEAT 5	3 562
DERMA TOWN	578
VARDAMAN TOWN	637
CARROLL COUNTY	11 177
BEAT 1	801
BEAT 2	1 807
BEAT 3	2 164
BEAT 4	3 350
CARROLLTON TOWN	343
NORTH CARROLLTON TOWN	521
BEAT 5	3 055
VAIDEN TOWN	475
CHICKASAW COUNTY	16 891
BEAT 1	5 668
HOUSTON TOWN	2 577
BEAT 2	2 227
HOULKA TOWN	547
BEAT 3	5 269
OKOLONA CITY	2 622
BEAT 4	2 023
BEAT 5	1 704
CHOCTAW COUNTY	8 423
BEAT 1	1 504
BEAT 2	1 647
MATHISTON TOWN (PART)	85
BEAT 3	1 274
FRENCH CAMP VILLAGE	123

Table 2.--POPULATION OF COUNTIES, BY MINOR CIVIL DIVISIONS: 1960--Con.

("U" denotes an unincorporated place. Total population of a place located in 2 or more minor civil divisions appears in table 3)

County and minor civil division	Population
CHOCTAW COUNTY--CON.	
BEAT 4.	1 751
WEIR TOWN	522
BEAT 5.	2 247
ACKERMAN TOWN	1 382
	10 845
CLAIBORNE COUNTY.	
BEAT 1.	6 123
PORT GIBSON TOWN.	2 861
BEAT 2.	1 313
BEAT 3.	614
BEAT 4.	1 624
BEAT 5.	1 171
	16 493
CLARKE COUNTY	5 659
BEAT 1 QUITMAN.	2 030
QUITMAN TOWN.	3 361
BEAT 2 SHUBUTA.	271
PACHUTA TOWN (PART)	718
SHUBUTA TOWN (PART).	4 067
BEAT 3 ENTERPRISE	532
ENTERPRISE TOWN	...
PACHUTA TOWN (PART)	1 126
STONEWALL (U)	1 442
BEAT 4 ENERGY	1 964
BEAT 5 MAXVILLE	...
SHUBUTA TOWN (PART)	
	18 933
CLAY COUNTY	5 418
BEAT 1.	3 311
WEST POINT CITY (PART).	7 827
BEAT 2.	5 239
WEST POINT CITY (PART).	1 933
BEAT 3.	1 637
BEAT 4.	2 118
BEAT 5.	
	46 212
COAHOMA COUNTY.	2 646
BEAT 1.	484
LULA TOWN	4 467
BEAT 2.	1 029
FRIARS POINT TOWN	4 996
BEAT 3.	889
JONESTOWN TOWN.	31 149
BEAT 4.	21 105
CLARKSDALE CITY	393
LYON VILLAGE.	2 954
BEAT 5.	
	27 051
COPIAH COUNTY	9 341
BEAT 1.	100
GALLMAN VILLAGE	3 400
HAZLEHURST CITY	3 332
BEAT 2.	193
BEAUREGARD VILLAGE.	1 157
WESSON TOWN	1 434
BEAT 3.	2 222
BEAT 4.	10 722
BEAT 5.	4 496
CRYSTAL SPRINGS CITY.	285
GEORGETOWN TOWN	
	13 637
COVINGTON COUNTY.	2 476
BEAT 1 SEMINARY	288
SEMINARY TOWN	1 572
BEAT 2 RICHMOND	3 752
BEAT 3 COLLINS.	1 537
COLLINS TOWN.	3 137
BEAT 4 MOUNT OLIVE.	841
MOUNT OLIVE TOWN.	2 700
BEAT 5 OAKOHAY.	
	23 891
DE SOTO COUNTY.	7 314
BEAT 1.	642
OLIVE BRANCH VILLAGE.	4 521
BEAT 2.	3 909
BEAT 3.	2 018
BEAT 4.	6 129
BEAT 5.	1 898
HERNANDO TOWN	
	52 722
FORREST COUNTY.	23 349
BEAT 1.	22 866
HATTIESBURG CITY (PART)	7 384
BEAT 2.	3 355
PETAL (U) (PART).	

County and minor civil division	Population
FORREST COUNTY--CON.	
BEAT 3.	18 147
HATTIESBURG CITY (PART)	12 123
PETAL (U) (PART).	652
BEAT 4.	1 812
BEAT 5.	2 030
	9 286
FRANKLIN COUNTY	2 210
BEAT 1.	585
ROXIE VILLAGE	904
BEAT 2.	3 408
BEAT 3.	1 185
BUDE TOWN	611
MEADVILLE TOWN.	1 205
BEAT 4.	1 559
BEAT 5.	
	11 098
GEORGE COUNTY	5 283
BEAT 1.	1 977
LUCEDALE TOWN	1 850
BEAT 2.	1 432
BEAT 3.	1 397
BEAT 4.	936
BEAT 5.	
	8 366
GREENE COUNTY	2 339
BEAT 1 LEAKESVILLE.	1 014
LEAKESVILLE TOWN.	1 485
BEAT 2 STATE LINE	308
STATE LINE TOWN (PART).	1 367
BEAT 3 PIAVE.	1 228
BEAT 4 VERNAL	1 947
BEAT 5 WASHINGTON	
	18 409
GRENADA COUNTY.	13 238
BEAT 1.	7 914
GRENADA CITY.	1 491
TIE PLANT (U)	1 324
BEAT 2.	580
BEAT 3.	1 195
BEAT 4.	2 072
BEAT 5.	97
HOLCOMB VILLAGE	
	14 039
HANCOCK COUNTY.	1 333
BEAT 1.	869
BEAT 2.	1 147
BEAT 3.	1 838
BEAT 4.	8 852
BEAT 5 BAY ST LOUIS	5 073
BAY ST LOUIS CITY	1 106
WAVELAND TOWN	
	119 489
HARRISON COUNTY	57 932
BEAT 1 BILOXI	44 053
BILOXI CITY	2 105
D IBERVILLE (U) (PART).	51 516
BEAT 2 GULFPORT	30 204
GULFPORT CITY.	1 577
HANDSBORO (U)	4 770
LONG BEACH TOWN	4 169
MISSISSIPPI CITY (U).	3 323
WEST GULFPORT (U)	6 753
BEAT 3 PASS CHRISTIAN	3 881
PASS CHRISTIAN CITY	2 163
BEAT 4.	1 125
BEAT 5.	
	187 045
HINDS COUNTY.	81 691
BEAT 1.	76 361
JACKSON CITY (PART)	8 091
BEAT 2.	797
BOLTON TOWN	1 206
EDWARDS TOWN.	5 795
BEAT 3.	96
LEARNED TOWN.	764
UTICA TOWN.	53 472
BEAT 4.	3 438
CLINTON TOWN.	37 909
JACKSON CITY (PART)	1 381
RAYMOND TOWN.	37 996
BEAT 5.	30 152
JACKSON CITY (PART)	385
TERRY TOWN.	

Table 2.--POPULATION OF COUNTIES, BY MINOR CIVIL DIVISIONS: 1960--Con.

("U" denotes an unincorporated place. Total population of a place located in 2 or more minor civil divisions appears in table 3)

County and minor civil division	Population
HOLMES COUNTY	27 096
BEAT 1	8 580
LEXINGTON CITY	2 839
BEAT 2	6 906
DURANT TOWN	2 617
GOODMAN TOWN	922
WEST TOWN	282
BEAT 3	3 938
PICKENS TOWN	727
BEAT 4	2 347
BEAT 5	5 325
CRUGER TOWN	362
TCHULA TOWN	882
HUMPHREYS COUNTY	19 093
BEAT 1	8 313
BELZONI CITY	4 142
BEAT 2	2 972
ISOLA TOWN	532
BEAT 3	2 799
SILVER CITY TOWN	431
BEAT 4	1 302
BEAT 5	3 707
LOUISE TOWN	481
ISSAQUENA COUNTY	3 576
BEAT 1	536
BEAT 2	233
BEAT 3	443
BEAT 4	828
BEAT 5	1 536
ITAWAMBA COUNTY	15 080
BEAT 1	2 605
BEAT 2	3 698
MANTACHIE VILLAGE	246
BEAT 3	2 693
BEAT 4	1 139
BEAT 5	4 945
FULTON TOWN	1 706
JACKSON COUNTY	55 522
BEAT 1	3 369
BEAT 2	16 447
EASTSIDE (U)	4 318
ESCATAWPA (U)	1 464
KREOLE (U)	1 870
MOSS POINT CITY	6 631
BEAT 3	22 176
PASCAGOULA CITY	17 155
BEAT 4 SOUTHWEST	10 858
D IBERVILLE (U) (PART)	900
OCEAN SPRINGS TOWN	5 025
BEAT 5	2 672
JASPER COUNTY	16 909
BEAT 1 CENTER	1 908
BEAT 2 NORTHEAST	1 970
BEAT 3 NORTHWEST	1 644
LOUIN TOWN	389
MONTROSE TOWN	169
BEAT 4 SOUTHWEST	6 048
BAY SPRINGS TOWN	1 544
BEAT 5 SOUTHEAST	5 339
HEIDELBERG TOWN	1 049
JEFFERSON DAVIS COUNTY	13 540
BEAT 1	5 046
PRENTISS TOWN	1 321
BEAT 2	1 785
OAKVALE VILLAGE (PART)	7
BEAT 3	2 923
BASSFIELD TOWN	295
BEAT 4	1 813
BEAT 5	1 973
JEFFERSON COUNTY	10 142
BEAT 1	1 136
BEAT 2	2 090
BEAT 3	4 516
FAYETTE TOWN	1 626
BEAT 4	1 234
BEAT 5	1 166
JONES COUNTY	59 542
BEAT 1 LAUREL	31 606
LAUREL CITY (PART)	27 078
BEAT 2 NORTHWEST	7 113
BEAT 3 NORTHEAST	8 001
LAUREL CITY (PART)	811
SANDERSVILLE TOWN	657
BEAT 4 SOUTHEAST	8 930
ELLISVILLE CITY	4 592
OVETT TOWN	290
BEAT 5 SOUTHWEST	3 892
KEMPER COUNTY	12 277
BEAT 1 SCOOBA	2 196
SCOOBA TOWN	513
BEAT 2 OAK GROVE	1 614
BEAT 3 MOSCOW	2 336
BEAT 4 KELLIS STORE	2 976
BEAT 5 DE KALB	3 155
DE KALB TOWN	880
LAFAYETTE COUNTY	21 255
BEAT 1	13 556
OXFORD CITY	5 283
UNIVERSITY (U)	3 597
BEAT 2	1 024
BEAT 3	2 335
BEAT 4	2 361
TAYLOR VILLAGE	122
BEAT 5	2 079
LAMAR COUNTY	13 675
BEAT 1	3 587
PURVIS TOWN	1 614
BEAT 2	3 223
LUMBERTON CITY	2 108
BEAT 3	1 203
BEAT 4	2 696
BEAT 5	2 966
SUMRALL TOWN	797
LAUDERDALE COUNTY	67 119
BEAT 1	55 068
MERIDIAN CITY	49 374
BEAT 2	2 136
BEAT 3	3 959
BEAT 4	2 680
BEAT 5	3 276
LAWRENCE COUNTY	10 215
BEAT 1	3 482
MONTICELLO TOWN	1 432
BEAT 2	1 321
BEAT 3	1 748
BEAT 4	1 653
NEWHEBRON VILLAGE	271
BEAT 5	2 011
OAKVALE VILLAGE (PART)	92
SILVER CREEK TOWN	229
LEAKE COUNTY	18 660
BEAT 1	2 835
BEAT 2	6 407
CARTHAGE TOWN	2 442
BEAT 3	2 054
BEAT 4	2 141
LENA TOWN	307
BEAT 5	5 223
WALNUT GROVE TOWN	433
LEE COUNTY	40 589
BEAT 1	4 112
BALDWYN TOWN (PART)	1 015
GUNTOWN TOWN	269
BEAT 2	3 633
SALTILLO TOWN	536
BEAT 3	20 405
TUPELO CITY (PART)	15 291
BEAT 4	7 072
PLANTERSVILLE VILLAGE	572
TUPELO CITY (PART)	1 930
VERONA TOWN	824
BEAT 5	5 367
NETTLETON TOWN (PART)	670
SHANNON TOWN	554

Table 2.--POPULATION OF COUNTIES, BY MINOR CIVIL DIVISIONS: 1960--Con.

("U" denotes an unincorporated place. Total population of a place located in 2 or more minor civil divisions appears in table 3)

County and minor civil division	Population
LEFLORE COUNTY	47 142
BEAT 1	4 267
BEAT 2	5 497
BEAT 3	26 160
GREENWOOD CITY	20 436
BEAT 4	6 085
ITTA BENA TOWN	1 914
BEAT 5	5 133
SIDON TOWN	410
LINCOLN COUNTY	26 759
BEAT 1	14 135
BROOKHAVEN CITY	9 885
BEAT 2	2 939
BEAT 3	2 458
BEAT 4	3 925
BEAT 5	3 302
LOWNDES COUNTY	46 639
BEAT 1	7 648
CALEDONIA VILLAGE	289
BEAT 2	25 188
COLUMBUS CITY (PART)	21 978
BEAT 3	7 978
COLUMBUS CITY (PART)	2 793
BEAT 4	2 877
CRAWFORD TOWN	317
BEAT 5	2 948
ARTESIA TOWN	469
MADISON COUNTY	32 904
BEAT 1	16 416
CANTON CITY	9 707
BEAT 2 VERNON	3 672
FLORA TOWN	743
BEAT 3 LIVINGSTON	6 359
MADISON TOWN	703
RIDGELAND VILLAGE	875
BEAT 4 SHARON	3 190
BEAT 5 CAMDEN	3 267
MARION COUNTY	23 293
BEAT 1	6 741
COLUMBIA CITY (PART)	4 016
BEAT 2	3 264
COLUMBIA CITY (PART)	619
BEAT 3	3 812
BEAT 4	3 045
BEAT 5	6 431
COLUMBIA CITY (PART)	2 482
MARSHALL COUNTY	24 503
BEAT 1	9 638
HOLLY SPRINGS CITY	5 621
BEAT 2	4 152
BEAT 3	5 302
BYHALIA TOWN	674
BEAT 4	3 062
BEAT 5	2 349
POTTS CAMP TOWN	429
MONROE COUNTY	33 953
BEAT 1	10 870
AMORY CITY	6 474
SMITHVILLE TOWN	489
BEAT 2	2 813
BEAT 3	3 457
GATTMAN VILLAGE	145
BEAT 4	11 257
ABERDEEN CITY	6 450
PRAIRIE VILLAGE	112
BEAT 5	5 556
NETTLETON TOWN (PART)	719
MONTGOMERY COUNTY	13 320
BEAT 1 WINONA	7 050
WINONA CITY	4 282
BEAT 2 DUCK HILL	1 960
DUCK HILL TOWN	674
BEAT 3 LODI	1 195
BEAT 4 KILMICHAEL	2 320
KILMICHAEL TOWN	532
STEWART VILLAGE	162
BEAT 5 POPLAR CREEK	795
NESHOBA COUNTY	20 927
BEAT 1 PHILADELPHIA	10 241
PHILADELPHIA CITY	5 017
BEAT 2 NORTH BEND	2 036
BEAT 3 MOGULUSHA	2 483
BEAT 4 DIXON AND WALDO	3 909
UNION TOWN (PART)	102
BEAT 5 RILEY	2 258
NEWTON COUNTY	19 517
BEAT 1	3 680
DECATUR TOWN	1 340
BEAT 2	3 386
UNION TOWN (PART)	794
BEAT 3	3 380
UNION TOWN (PART)	830
BEAT 4	6 116
LAKE TOWN (PART)	4
NEWTON CITY	3 178
BEAT 5	2 955
CHUNKY VILLAGE	224
HICKORY TOWN	539
NOXUBEE COUNTY	16 826
BEAT 1	3 689
BEAT 2	1 312
BEAT 3	4 950
MACON CITY	2 432
BEAT 4	3 470
SHUQUALAK TOWN	550
BEAT 5	3 405
BROOKSVILLE TOWN	857
OKTIBBEHA COUNTY	26 175
BEAT 1	16 289
STARKVILLE CITY	9 041
BEAT 2	2 507
BEAT 3	2 577
MABEN TOWN (PART)	517
BEAT 4	2 049
STURGIS TOWN	358
BEAT 5	2 753
PANOLA COUNTY	28 791
BEAT 1	4 861
COMO TOWN	789
BEAT 2	3 905
CRENSHAW TOWN (PART)	1 072
BEAT 3	5 802
COURTLAND VILLAGE	242
CROWDER TOWN (PART)	195
POPE VILLAGE	246
BEAT 4	2 778
BEAT 5	11 445
BATESVILLE TOWN	3 284
SARDIS TOWN	2 098
PEARL RIVER COUNTY	22 411
BEAT 1	4 134
POPLARVILLE TOWN	2 136
BEAT 2	1 162
BEAT 3	2 165
BEAT 4	11 811
PICAYUNE CITY (PART)	7 834
BEAT 5	3 139
PICAYUNE CITY (PART)	...
PERRY COUNTY	8 745
BEAT 1	897
NEW AUGUSTA TOWN	275
BEAT 2	1 660
BEAT 3	3 133
RICHTON TOWN	1 089
BEAT 4	2 115
BEAUMONT TOWN	926
BEAT 5	940
PIKE COUNTY	35 063
BEAT 1	2 697
BEAT 2	9 496
MC COMB CITY (PART)	617
MC COMB SOUTH (U)	1 865
MAGNOLIA CITY	2 083
BEAT 3	2 263

Table 2.--POPULATION OF COUNTIES, BY MINOR CIVIL DIVISIONS: 1960--Con.

("U" denotes an unincorporated place. Total population of a place located in 2 or more minor civil divisions appears in table 3)

County and minor civil division	Population
PIKE COUNTY--CON.	
BEAT 4	17 262
MC COMB CITY (PART)	11 403
SUMMIT TOWN	1 663
BEAT 5	3 345
OSYKA TOWN	712
PONTOTOC COUNTY	17 232
BEAT 1	2 298
ECRU TOWN	442
SHERMAN TOWN (PART)	359
BEAT 2	3 011
BEAT 3	3 293
RANDOLPH VILLAGE	131
TOCCOPOLA TOWN	198
BEAT 4	5 965
PONTOTOC CITY	2 108
BEAT 5	2 665
PRENTISS COUNTY	17 949
BEAT 1	7 425
BOONEVILLE TOWN	3 480
BEAT 2	2 335
BEAT 3	3 598
BALDWYN TOWN (PART)	1 008
BEAT 4	2 131
BEAT 5	2 460
QUITMAN COUNTY	21 019
BEAT 1	5 246
CRENSHAW TOWN (PART)	310
SLEDGE TOWN	440
BEAT 2	2 174
BEAT 3	6 058
MARKS TOWN	2 572
BEAT 4	2 101
BEAT 5	5 440
CROWDER TOWN (PART)	333
LAMBERT TOWN	1 181
RANKIN COUNTY	34 322
BEAT 1	6 603
FLORENCE VILLAGE	360
BEAT 2	19 319
BRANDON TOWN	2 139
FLOWOOD TOWN	486
PEARL (U)	5 081
BEAT 3	2 654
BEAT 4	3 160
PELAHATCHIE TOWN	1 066
BEAT 5	2 586
PUCKETT TOWN	302
SCOTT COUNTY	21 187
BEAT 1	7 490
FOREST CITY (PART)	3 697
BEAT 2	2 473
FOREST CITY (PART)	220
LAKE TOWN (PART)	293
BEAT 3	5 522
MORTON TOWN	2 260
BEAT 4	2 623
BEAT 5	3 079
SEBASTOPOL TOWN	343
SHARKEY COUNTY	10 738
BEAT 1	291
BEAT 2	1 706
CARY TOWN	428
BEAT 3	2 811
ROLLING FORK TOWN	1 619
BEAT 4	3 066
ANGUILLA TOWN	580
BEAT 5	2 864
SIMPSON COUNTY	20 454
BEAT 1	8 446
MAGEE TOWN (PART)	1 010
MENDENHALL TOWN	1 946
WEATHERSBY VILLAGE	80
BEAT 2	4 240
MAGEE TOWN (PART)	1 029

County and minor civil division	Population
SIMPSON COUNTY--CON.	
BEAT 3	4 568
BRAXTON VILLAGE	191
D LO TOWN	428
PINOLA VILLAGE	116
BEAT 4	1 702
BEAT 5	1 498
SMITH COUNTY	14 303
BEAT 1	3 941
RALEIGH TOWN	614
SYLVARENA VILLAGE	69
BEAT 2	3 943
TAYLORSVILLE TOWN	1 132
BEAT 3	3 199
MIZE TOWN	371
BEAT 4	1 758
BEAT 5	1 462
STONE COUNTY	7 013
BEAT 1	3 582
WIGGINS TOWN	1 591
BEAT 2	588
BEAT 3	1 451
BEAT 4	321
BEAT 5	1 071
SUNFLOWER COUNTY	45 750
BEAT 1	4 504
INVERNESS TOWN	1 039
BEAT 2	6 278
MOORHEAD TOWN	1 754
SUNFLOWER TOWN (PART)	658
BEAT 3	11 508
INDIANOLA CITY	6 714
BEAT 4	7 689
DODDSVILLE TOWN	190
SUNFLOWER TOWN (PART)	4
BEAT 5	15 771
DREW TOWN	2 143
ROME TOWN	279
RULEVILLE TOWN	1 902
TALLAHATCHIE COUNTY	24 081
BEAT 1	1 493
ENID VILLAGE	128
BEAT 2	4 795
CHARLESTON CITY	2 528
BEAT 3	3 056
BEAT 4	6 758
GLENDORA VILLAGE	147
BEAT 5	7 979
SUMNER TOWN	551
TUTWILER TOWN	912
WEBB TOWN	686
TATE COUNTY	18 138
BEAT 1	2 428
BEAT 2	2 470
BEAT 3	3 787
COLDWATER TOWN	1 264
BEAT 4	6 503
SENATOBIA TOWN	3 259
BEAT 5	2 950
TIPPAH COUNTY	15 093
BEAT 1	3 045
WALNUT TOWN	390
BEAT 2	6 367
RIPLEY CITY	2 668
BEAT 3	2 671
BLUE MOUNTAIN TOWN	741
BEAT 4	1 597
BEAT 5	1 413
TISHOMINGO COUNTY	13 889
BEAT 1	4 412
IUKA TOWN	2 010
BEAT 2	2 462
BURNSVILLE TOWN	416
BEAT 3	1 507

Table 2.--POPULATION OF COUNTIES, BY MINOR CIVIL DIVISIONS: 1960--Con.

("U" denotes an unincorporated place. Total population of a place located in 2 or more minor civil divisions appears in table 3)

County and minor civil division	Population
TISHOMINGO COUNTY--CON.	
BEAT 4	2 152
PADEN VILLAGE	134
TISHOMINGO TOWN	415
BEAT 5	3 356
BELMONT TOWN	901
GOLDEN VILLAGE	121
TUNICA COUNTY	16 826
BEAT 1	2 419
BEAT 2	5 797
TUNICA NORTH (U)	1 025
TUNICA TOWN	1 445
BEAT 3	3 092
BEAT 4	2 411
BEAT 5	3 107
UNION COUNTY	18 904
BEAT 1	1 960
BEAT 2	3 846
MYRTLE TOWN	313
BEAT 3	9 608
NEW ALBANY CITY	5 151
BEAT 4	2 199
BLUE SPRINGS VILLAGE	99
SHERMAN TOWN (PART)	44
BEAT 5	1 291
WALTHALL COUNTY	13 512
BEAT 1	1 861
BEAT 2	4 402
TYLERTOWN TOWN	1 532
BEAT 3	2 800
BEAT 4	1 816
BEAT 5	2 633
WARREN COUNTY	42 206
BEAT 1	8 730
VICKSBURG CITY (PART)	1 171
BEAT 2	8 361
VICKSBURG CITY (PART)	8 361
BEAT 3	8 301
VICKSBURG CITY (PART)	8 301
BEAT 4	7 914
VICKSBURG CITY (PART)	7 914
BEAT 5	8 900
VICKSBURG CITY (PART)	3 396
WASHINGTON COUNTY	78 638
BEAT 1	2 608
BEAT 2	3 104
BEAT 3	49 736
GREENVILLE CITY	41 502
GREENVILLE NORTH (U)	2 516
BEAT 4	14 846
ARCOLA TOWN (PART)	172
LELAND CITY	6 295
BEAT 5	8 344
ARCOLA TOWN (PART)	194
HOLLANDALE CITY	2 646
WAYNE COUNTY	16 258
BEAT 1	3 050
STATE LINE TOWN (PART)	345
BEAT 2	6 126
WAYNESBORO TOWN	3 892
BEAT 3	1 706
BEAT 4	3 129
BEAT 5	2 247
WEBSTER COUNTY	10 580
BEAT 1	3 861
EUPORA TOWN	1 468
WALTHALL VILLAGE	153
BEAT 2	1 177
BEAT 3	1 408
BEAT 4	2 630
MABEN TOWN (PART)	179
MATHISTON TOWN (PART)	512
BEAT 5	1 504
MANTEE VILLAGE	166
WILKINSON COUNTY	13 235
BEAT 1	5 333
WOODVILLE TOWN	1 856
BEAT 2	1 836
BEAT 3	3 367
CENTREVILLE TOWN (PART)	935
BEAT 4	809
BEAT 5	1 890
CROSBY TOWN (PART)	396
WINSTON COUNTY	19 246
BEAT 1 LOUISVILLE	8 162
LOUISVILLE CITY	5 066
BEAT 2 SOUTHEAST	3 440
BEAT 3 WEBSTER	2 076
BEAT 4 NORTHWEST	2 529
BEAT 5 PLATTSBURG	3 039
NOXAPATER TOWN	549
YALOBUSHA COUNTY	12 502
BEAT 1	3 043
COFFEEVILLE TOWN	813
BEAT 2	2 922
WATER VALLEY CITY (PART)	1 460
BEAT 3	3 327
WATER VALLEY CITY (PART)	1 746
BEAT 4	2 419
OAKLAND TOWN	488
TILLATOBA VILLAGE	102
BEAT 5	791
YAZOO COUNTY	31 653
BEAT 1	4 436
BENTONIA TOWN	511
SATARTIA VILLAGE	126
BEAT 2	4 287
BEAT 3	16 962
YAZOO CITY CITY	11 236
BEAT 4	3 967
EDEN VILLAGE	218
BEAT 5	2 001

Table 3.--POPULATION OF ALL INCORPORATED PLACES AND OF UNINCORPORATED PLACES OF 1,000 OR MORE: 1960

("U" denotes an unincorporated place. Asterisk (*) denotes an incorporated place under 2,500 located in an urbanized area)

Place	Population
ABERDEEN	6 450
ACKERMAN	1 382
ALLIGATOR	227
AMORY	6 474
ANGUILLA	580
ARCOLA	366
ARTESIA	469
ASHLAND	309
BALDWYN	2 023
BASSFIELD	295
BATESVILLE	3 284
BAY ST LOUIS	5 073
BAY SPRINGS	1 544
BEAUMONT	926
BEAUREGARD	193
BELMONT	901
BELZONI	4 142
BENOIT	453
BENTONIA	511
BEULAH	421
BIG CREEK	100
BILOXI	44 053
BLUE MOUNTAIN	741
BLUE SPRINGS	99
BOLTON	797
BOONEVILLE	3 480
BOYLE	848
BRANDON	2 139
BRAXTON	191
BROOKHAVEN	9 885
BROOKSVILLE	857
BRUCE	1 698
BUDE	1 185
BURNSVILLE	416
BYHALIA	674
CALEDONIA	289
CALHOUN CITY	1 714
CANTON	9 707
CARROLLTON	343
CARTHAGE	2 442
CARY	428
CENTREVILLE	1 229
CHARLESTON	2 528
CHUNKY	224
CLARKSDALE	21 105
CLEVELAND	10 172
CLINTON	3 438
COFFEEVILLE	813
COLDWATER	1 264
COLLINS	1 537
COLUMBIA	7 117
COLUMBUS	24 771
COMO	789
CORINTH	11 453
COURTLAND	242
CRAWFORD	317
CRENSHAW	1 382
CROSBY	705
CROWDER	528
CRUGER	362
CRYSTAL SPRINGS	4 496
DECATUR	1 340
DE KALB	880
DERMA	578
D'IBERVILLE (U)	3 005
D'LO	428
DODDSVILLE	190
DREW	2 143
DUCK HILL	674
DUNCAN	465
DURANT	2 617
EASTSIDE (U)	4 304
ECRU	442
EDEN	218
EDWARDS	1 206
ELLISVILLE	4 592
ENID	128
ENTERPRISE	532
ESCATAWPA (U)	1 464
ETHEL	566
EUPORA	1 468
FAYETTE	1 626
FLORA	743
FLORENCE	360
FLOWOOD	486
FOREST	3 917
FRENCH CAMP	123
FRIARS POINT	1 029
FULTON	1 706
GALLMAN	100
GATTMAN	145
GEORGETOWN	285
GLENDORA	147
GLOSTER	1 369
GOLDEN	121
GOODMAN	932
GREENVILLE	41 502
GREENVILLE NORTH (U)	2 516
GREENWOOD	20 436
GRENADA	7 914
GULFPORT	30 204
GUNNISON	448
GUNTOWN	269
HANDSBORO (U)	1 577
HATTIESBURG	34 989
HAZLEHURST	3 400
HEIDELBERG	1 049
HERNANDO	1 898
HICKORY	539
HICKORY FLAT	344
HOLCOMB	97
HOLLANDALE	2 646
HOLLY SPRINGS	5 621
HOULKA	547
HOUSTON	2 577
INDIANOLA	6 714
INVERNESS	1 039
ISOLA	532
ITTA BENA	1 914
IUKA	2 010
JACKSON	144 422
JONESTOWN	889
KILMICHAEL	532
KOSCIUSKO	6 800
KOSSUTH	178
KREOLE (U)	1 870
LAKE	297
LAMBERT	1 181
LAUREL	27 889
LEAKESVILLE	1 014
LEARNED	96
LELAND	6 295
LENA	307
LEXINGTON	2 839
LIBERTY	642
LONG BEACH	4 770
LOUIN	389
LOUISE	481
LOUISVILLE	5 066
LUCEDALE	1 977
LULA	484
LUMBERTON	2 108
LYON	393
MC COMB	12 020
MC COMB SOUTH (U)	1 865
MC COOL	211
MABEN	696
MACON	2 432
MADISON	703
MAGEE	2 039
MAGNOLIA	2 083
MANTACHIE	246
MANTEE	166
MARKS	2 572
MATHISTON	597
MEADVILLE	611

Table 3.--POPULATION OF ALL INCORPORATED PLACES AND OF UNINCORPORATED PLACES OF 1,000 OR MORE: 1960--Con.

("U" denotes an unincorporated place. Asterisk (*) denotes an incorporated place under 2,500 located in an urbanized area)

Place	Population
MENDENHALL	1 946
MERIDIAN	49 374
MERIGOLD	602
MISSISSIPPI CITY (U)	4 169
MIZE	371
MONTICELLO	1 432
MONTROSE	169
MOORHEAD	1 754
MORTON	2 260
MOSS POINT	6 631
MOUND BAYOU	1 354
MOUNT OLIVE	841
MYRTLE	313
NATCHEZ	23 791
NETTLETON	1 389
NEW ALBANY	5 151
NEW AUGUSTA	275
NEWHEBRON	271
NEWTON	3 178
NORTH CARROLLTON	521
TUNICA NORTH (U)	1 025
NOXAPATER	549
OAKLAND	488
OAKVALE	99
OCEAN SPRINGS	5 025
OKOLONA	2 622
OLIVE BRANCH	642
OSYKA	712
OVETT	290
OXFORD	5 283
PACE	420
PACHUTA	271
PADEN	134
PASCAGOULA	17 139
PASS CHRISTIAN	3 881
PEARL (U)	5 081
PELAHATCHIE	1 066
PETAL (U)	4 007
PHILADELPHIA	5 017
PICAYUNE	7 834
PICKENS	727
PINOLA	116
PITTSBORO	205
PLANTERSVILLE	572
PONTOTOC	2 108
POPE	246
POPLARVILLE	2 136
PORT GIBSON	2 861
POTTS CAMP	429
PRAIRIE	112
PRENTISS	1 321
PUCKETT	302
PURVIS	1 614
QUITMAN	2 030
RALEIGH	614
RANDOLPH	131
RAYMOND	1 381
RICHTON	1 089
RIDGELAND	875
RIENZI	375
RIPLEY	2 668
ROLLING FORK	1 619
ROME	279
ROSEDALE	2 339
ROXIE	585
RULEVILLE	1 902
SALLIS	223
SALTILLO	536
SANDERSVILLE	657
SARDIS	2 098
SATARTIA	126
SCOOBA	513
SEBASTOPOL	343
SEMINARY	288
SENATOBIA	3 259
SHANNON	554
SHAW	2 062
SHELBY	2 384
SHERMAN	403
SHUBUTA	718
SHUQUALAK	550
SIDON	410
SILVER CITY	431
SILVER CREEK	229
SLATE SPRINGS	123
SLEDGE	440
SMITHVILLE	489
STARKVILLE	9 041
STATE LINE	653
STEWART	162
STONEWALL (U)	1 126
STURGIS	358
SUMMIT	1 663
SUMNER	551
SUMRALL	797
SUNFLOWER	662
SYLVARENA	69
TAYLOR	122
TAYLORSVILLE	1 132
TCHULA	882
TERRY	585
TIE PLANT (U)	1 491
TILLATOBA	102
TISHOMINGO	415
TOCCOPOLA	198
TUNICA	1 445
TUPELO	17 221
TUTWILER	912
TYLERTOWN	1 532
UNION	1 726
UNIVERSITY (U)	3 597
UTICA	764
VAIDEN	475
VARDAMAN	637
VERONA	824
VICKSBURG	29 130
WALNUT	390
WALNUT GROVE	433
WALTHALL	153
WATER VALLEY	3 206
WAVELAND	1 106
WAYNESBORO	3 892
WEATHERSBY	80
WEBB	686
WEIR	522
WESSON	1 157
WEST	282
WEST GULFPORT (U)	3 323
WEST POINT	8 550
WIGGINS	[illegible] 2332
WINONA	4 282
WINSTONVILLE	327
WOODVILLE	1 856
YAZOO CITY	11 236

State of Mississippi

Office of Secretary of State
Jackson

I, Heber Ladner, Secretary of State of the State of Mississippi, do hereby certify that the within and attached is a true and correct copy of **HOUSE BILL NO. 911, LAWS OF MISSISSIPPI OF 1966.**

the original of which is now a matter of record in this office.

Given under my hand and Seal of Office this the **30th day of June, 1966**

Secretary of State

C-28

Exhibit "A"

Originated in House / Clerk

House Bill No. 911

AN ACT TO AMEND SECTION 3305, MISSISSIPPI CODE OF 1942, RECOMPILED, AS AMENDED, TO APPORTION AND REDISTRICT THE CONGRESSIONAL DISTRICTS OF THE STATE OF MISSISSIPPI.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. Section 3305, Mississippi Code of 1942, Recompiled, as amended, is amended to read as follows:

3305. The State of Mississippi is hereby divided into five (5) Congressional districts as follows:

First District. The First Congressional District shall be composed of the following counties: Bolivar, Washington, Sunflower, Leflore, Carroll, Montgomery, Attala, Choctaw, Webster, Calhoun, Chickasaw, Clay, Oktibbeha, Lowndes and Monroe.

Second District. The Second Congressional District shall be composed of the following counties: DeSoto, Tunica, Tate, Panola, Quitman, Coahoma, Tallahatchie, Grenada, Yalobusha, Lafayette, Marshall, Benton, Tippah, Union, Pontotoc Lee, Itawamba, Prentiss, Tishomingo and Alcorn.

Third District. The Third Congressional District shall be composed of the following counties: Warren, Hinds, Claiborne, Copiah, Jefferson, Lincoln, Franklin, Adams, Wilkinson, Amite, Pike and Walthall.

Fourth District. The Fourth Congressional District shall be composed of the following counties: Issaquena, Sharkey, Humphreys, Holmes, Yazoo, Madison, Rankin, Simpson, Leake, Scott, Smith, Jasper, Newton, Neshoba, Winston, Noxubee, Kemper, Lauderdale and Clarke.

Fifth District. The Fifth Congressional District shall be composed of the following counties: Lawrence, Jefferson Davis, Covington, Jones, Wayne, Greene, Perry, Harrison, Hancock, Forrest, Lamar, Marion, Pearl River, Stone, George and Jackson.

SECTION 2. The present number of Congressmen in the United States House of Representatives from this State shall continue to serve and represent their respective existing districts until the expiration of the terms for which they were elected. At

the general election to be held on the first Tuesday after the first Monday in November, A. D., 1966, there shall be elected one (1) Congressman from each of the five (5) Congressional districts created by the preceding section.

SECTION 3. In the event a vacancy occurs in either of the five (5) existing Congressional districts by reason of death, resignation or otherwise from the effective date of this act and the expiration of the terms of the present Congressmen, such vacancy shall be filled as provided by existing laws as if this act had not been passed.

SECTION 4. This act shall take effect and be in force from and after its passage.

Approved: April 7, 1966

WEISMAN & WEISMAN
ATTORNEYS AT LAW
49 LEAVENWORTH STREET
WATERBURY 2, CONNECTICUT

HERMAN J. WEISMAN
1909-1961

H. JOHN WEISMAN
FRED B. ROSNICK
PETER MARCUSE

NORMAN S. DRUBNER
ALAN H. HERTZMARK

AREA CODE 203
754-2105

OCT 11 1965

October 8, 1965

Mr. Carl Rachlin
165 West 46th Street
New York, New York

Dear Carl,

Enclosed is the final copy of the Mississippi Reapportionment suit. I would like to call you on it on Monday and discuss it briefly with you on the phone; I hope you will have a chance to read it promptly!

Very truly yours,

WEISMAN & WEISMAN

Peter Marcuse

peter Marcuse

Carl:

You'll note I took your suggestions on the sequence + priority of actions, dropping the original "g" of the prayers for relief, clarifying the apportionment figures, etc.!

Pete

October 19, 1965

Henry Schwarzschild, Esq.
LCDC
156 Fifth Avenue
New York, New York

RE: Mississippi Reapportionment

Dear Henry:

As you know, the Mississippi Reapportionment case will be filed very soon. Through our own neglect of course, we did not carry forward the plan we discussed last Winter. While I have, as you now know, objections to this case being filed in the name of the Mississippi Freedom Democratic Party, it seems to me that LCDC should be involved officially, particularly since Mel and I at least, as well as Peter will be on the complaint. I forego asking that CORE be officially a part of the case because I recognize that if we bring CORE in, the other civil rights organizations may claim similar privileges and the case to that extent becomes unweildy, but it seems to me that there is no reason why this should not be a joint LCDC and MFDP operation. Presumably whatever benefit CORE or ACLU will get from the bringing of this case will come from Mel's and my association with it.

As you know, the approach that Peter, Arthur Kinoy and I have agreed upon, in essence, asking the court to apply the second part of the Fouteenth Amendment to a state legislative reapportionment case, one that is of particular interest to me and in good part will be what we contribute to a reapportionment case. Hopefully, this case can be an important

Cont'd...

case and further, it can be useful to encourage Negro registration. May I suggest that before the complaint is actually filed, this matter be clarified.

With best regards,

Sincerely,

CR/cs

CARL RACHLIN
General Counsel

cc: Melvin Wulf, Esq.
Peter Marcuse, Esq.

LAWYERS CONSTITUTIONAL DEFENSE COMMITTEE
OF
THE AMERICAN CIVIL LIBERTIES UNION
156 FIFTH AVENUE, NEW YORK, N.Y. 10010
(212) YUKON 9-7530

Miss Rachlin

PRESIDENT
LEO PFEFFER
Special Counsel
American Jewish Congress

VICE-PRESIDENTS
JOHN M. PRATT
Counsel, Commission on
Religion and Race
National Council of Churches

CARL RACHLIN
General Counsel
Congress of Racial Equality

SECRETARY
MELVIN L. WULF
Legal Director
American Civil Liberties Union

TREASURER
EDWIN J. LUKAS
National Affairs Director
American Jewish Committee

GENERAL COUNSEL
CLARENCE B. JONES
Counsel to the
Rev. Dr. Martin Luther King, Jr.

ROBERT L. CARTER
General Counsel
National Association for
the Advancement of Colored People

THE REV. ROBERT F. DRINAN, S.J.
Counsel
National Catholic Conference
for Interracial Justice

HOWARD MOORE, JR.
Counsel
Student Non-violent
Coordinating Committee

CHARLES MORGAN, JR.
Southern Regional Director
American Civil Liberties Union

JOHN DE J. PEMBERTON, JR.
Executive Director
American Civil Liberties Union

EXECUTIVE SECRETARY
HENRY SCHWARZSCHILD

SOUTHERN OFFICE
603 North Farish Street
Jackson, Mississippi 39202
(601) 948-4191

ALVIN J. BRONSTEIN
Staff Counsel

October 20, 1965

OCT 21 1965

Carl Rachlin, Esq.
CORE
38 Park Row
New York, N.Y. 10038

Dear Carl:

In re the Mississippi reapportionment suit: The Times this morning reports that it has been filed. To my best recollection, Peter Marcuse indicated that the names on the papers would be himself, Len Rosenthal; Kinoy; possibly Stavis; Wulf; and you. Pratt declined for reasons of National Council of Churches hesitancy relating to the MFDP.

I am not sure in what way LCDC should be involved "officially." Organizations don't practice law, and I am sure you also observe Mel's practice of having only your personal name on papers, not the organization's name (except in the case of amicus briefs). Once we got into it with Kinoy, it was plain that as General Counsel to MFDP this would be a case to which the Party would be a party. In effect, therefore, it is a joint MFDP-LCDC case. We'll take credit for it (if it redounds to anyone's credit), but I don't know what we can do to possess it "officially." P.R.? We're notoriously bad at that anyway, witness this morning's Times report without attribution to anyone. The Inc. Fund, I think, would rather lose the Brown case than forego a quote from its Director-Counsel in the Times, with brooding photograph if possible. When I was 3, I was told that virtue is its own reward; after 37 additional years, I'm still trying to prove the insane proposition.

Cordially,

Henry Schwarzschild
Executive Secretary

HS:c
CC: Melvin L. Wulf, Esq.
Peter Marcuse, Esq.

252

Contributions to LCDC of ACLU are tax-deductible.

DEC 2 1965

WEISMAN & WEISMAN
ATTORNEYS AT LAW
49 LEAVENWORTH STREET
WATERBURY, CONNECTICUT
06702

AREA CODE 203
757-1551

HERMAN J. WEISMAN
1909-1961

H. JOHN WEISMAN
FRED B. ROSNICK
PETER MARCUSE
NORMAN S. DRUBNER

ROBERT J. CREAN

November 29, 1965

Mr. Arthur Kinoy
511 Fifth Avenue
New York, New York 10017

In re: Mississippi Reapportionment

Dear Arthur:

Confirming my converaations with you and with Ben Smith and Bruce Waltzer, I understand that we will proceed as follows: Ben's office will prepare, and Len will file with Judge Cox, immediately, a Motion for a Hearing on our Request for a Preliminary Injunction. We will urge the Judge to assign it for approximately December 13, 1965, stressing that our concern is not only that the Legislature be reapportioned, but also that it be prevented from taking any action whatsoever until it has been reapportioned.

If Judge Cox does not act within a week to assign the hearing, or if he assigns it for some date beyond the week of December 13th, we will immediately go with a request for a mandamus to the United States Supreme Court, assuming this to be the proper procedure; it may perhaps be wise to speak to Judge Tuttle informally first.

Bruce tells me that Len believes that the Legislature may actually be convened specially in December. Bruce is going to ask Len to obtain as much information on this as he can now. If we get official word that the Legislature is going to meet prior to the date on which we have a hearing set, we will file a verified request for a Temporary Restraining Order seeking to prevent the Legislature from meeting, and if this is denied, go to the Supreme Court on the substantive issue, whether or not the procedural issue of a early date for the hearing on the Preliminary Injunction has been resolved.

By copy of this letter I am asking Len if he would call me just as soon as the request for a hearing on the Preliminary Injunction has been made, and I will advise you all of where we stand when I hear from him.

Very truly yours,

Peter Marcuse

Peter Marcuse

CC: Ben Smith
Len Rosenthal
Mel Wulf
Carl Rachlin
Al Bronston

WEISMAN & WEISMAN
ATTORNEYS AT LAW
49 LEAVENWORTH ST. — WATERBURY, CONN.
TELEPHONE 754-2105

DATE: 12/13/66

TO: Mr. Arthur Kinoy
Mr. Carl Rachlin

Dear Arthur and Carl:

Attached is the rough first draft of the Jurisdictional Statement in the Mississippi Reapportionment case. Mel Wulf has asked Dean McKay at the New York Law School to look at it also. I would, of course, also appreciate yours at your earliest convenience. I will have to update several of the citations, but I would appreciate your comments on the general format of the argument as well as on details.

I assume you are aware that the Mississippi Legislature passed a new act redistricting the State for State legislative purposes, which also appears to be racially gerry mandered as well as statistically insufficient, and we have been ordered to file a brief on this by December 17th. We will have opportunity for a reply brief on this point after the State files its brief, and I do not believe there will be enough time to circulate an advance copy of our brief before filing it. I will try to be in touch with you by telephone before December 17th, however to get your reactions on it.

Sincerely,

Pete

From the Desk of ...

PETER MARCUSE

Mem reapportionment

December 13, 1965

Peter Marcuse, Esq.
Weisman & Weisman
49 Leavenworth Street
Waterbury, Connecticut

Dear Peter:

Thank you for your letter of November 29. I am glad to see that the reapportionment case is moving along. Let me raise one small flat note. Since I believe in a twelve tone scale however, it is not serious, but nevertheless should be given some consideration.

I won't go over the history of the cases, we all know what is is, however I have always assumed that we were all in this case together and as you know, speaking purely personally, I have been very much concerned about the nature and form of the action and hopefully, may have contributed something thereto. I raise this not because of any personal peak, which I assure you I do not have but rather, more importantly, because I think decisions as to how to proceed and when to proceed ought to be made in a more corporative manner. In no way does this reflect on Arthur Kinoy, whose ability I have the highest regard for, or anyone else involved, but frankly I would have preferred having participated in the decision, instead of being advised of how Ben Smith will proceed. Of course, this in no way reflects on Ben Smith.

I appreciate the need for fast decisions, but I think that Mel Wulf and I ought to be parties to them.

With best personal regards,

Sincerely,

CARL RACHLIN
General Counsel

CR/cs

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AREA CODE 203
757-1551

HERMAN J. WEISMAN
1909-1961

H. JOHN WEISMAN
FRED B. ROSNICK
PETER MARCUSE
NORMAN S. DRUBNER

ROBERT J. CREAN

DEC 16 1965

December 15, 1965

Mr. Carl Rachlin
General Counsel
Congress of Racial Equality
38 Park Row
New York 38, New York

In re: Mississippi Reapportionment

Dear Carl:

In response to your letter on the handling of the Motion for a Hearing on the Preliminary Injunction, let me say that I entirely agree with the principle that you set forth, and, to the extent that my actions did not correspond with it, please accept my very real personal apology. I feel, frankly, very strongly that any substantive decision in connection with the case should be handled only after full consultation among all available counsel, and that in any event you and Mel should be involved. I think you know this, and that I was extremely anxious to have you and Mel in the case for precisely this reason. I do feel that fairly minor procedural matters do not necessarily require complete consultation every time, and I must admit that I felt the Motion for a Hearing was both so procedural a matter and so clearly appropriate that I felt even a round of telephone calls was not needed. This was largely my judgment, and if I was wrong, I am sorry.

Let me say at the same time that some of the action on this point from the Mississippi end went ahead without my really being aware of it or having been consulted fully. I appreciate your concern that there should be no significant unilateral action, and I believe the point should be clarified all around. In defense of Ben Smith and Arthur Kinoy, let me say that I am sure Ben felt as much as I did that this was a purely procedural point and that Arthur has been talking to me for three weeks about arranging a full scale review of the next steps in the case as soon as we heard one way or another on the Motion.

As a practical matter, I have been in touch with Jackson every second or third day by telephone to see whether there has been a ruling and I think action should be taken if there is no decision by the end of this week. Realistically this means that we should try to get together in New York, if at all possible, next week. I will try to be in touch with you by telephone on this by the end of this week.

In any event, I appreciate very much your writing to me as you did, and I hope you will raise the point as strongly as you feel appropriate as the occasion arises!

Sincerely yours,

Peter

Peter Marcuse

PM:ek

JUL 12 1966

Miss. reapportionment Case

July 11,1966

Memo: To all Counsel

From: Peter Marcuse

Re: Mississippi Reapportionment Case

Following up our conference in New York last Wednesday, our analysis of the issues and plans for the trial, as I now see them, are as follows: There are four principal issues:

A. Were the district lines established by the Mississippi legislature drawn with the deliberate intent and purpose of diluting and rendering ineffective the votes of a specific group, and consequently drawn in violation of the equal protection clause of the 14th amendment and/or the right to vote provisions of the 15th Amendment? If our proof is sufficient here, the doctrine of Gomillion vs Lightfoot would clearly void the district lines, the state can no more use its right to establish political boundaries to discriminate or segregate because of color than it can any other power. Our problem in this area is one of proof; Gomillion against Lightfoot is the only case in which such an argument has been sustained by the U.S. Supreme Court, and several other pretty clear cut cases, including Wright against Rockefeller, and the Richmond, Virginia case have gone the other way because of a "failure of proof".

B. Is the evidence we contemplate presenting on legislative intent admissable? As outlined below, we expect to introduce certain evidence that may be subject to attack under the hearsay rule to show the legislature's intent. I am confident that there is enough precedent for each specific proposed item to persuade at least an

unbiased court that it should be admitted; if any of the evidence is rejected, we will make the offer of proof and reserve our argument for appeal.

C. Is the congressional redistricting adopted by the Mississippi legislature, taken as a whole, fairly representative of all of the relevant social, political, economic and racial interests of the State? This argument is an alternate to 1 above, and presents fewer problems of proof but more of law. There are by now several cases which hold, in dicta that a broad standard of fairness of representation must be complied with by any plan of redistricting; the district court opinion in Hawaii is by far the best on this point, but a Georgia case and the dissent in Wright against Rockefeller state the same rule. The statistics on color by themselves may be sufficient evidence on this point, but we hope to have expert testimony as to the probable effects of the present voting plan available also. The legal problem here is different from the standard situation of Gomillion; in Wright against Rockefeller, for instance, where otherwise our best language is found, the district was drawn so as to include the heavy preponderance of Negroes and Puerto Ricans in one district, and virtually none in the adjoining districts. Our problem here is exactly the reverse, and we are in effect fighting against a proposal that makes each district as integrated as possible; the closest analogy in the cases, and I believe a very good one, is to the situations where multi-member districts are established with the net effect of making a minority group that would otherwise be a majority in a smaller single-member district a minority in a larger multi-member district.

D. Does the districting of the Mississippi State House of Representatives and the Senate violate the equal protection provisions of the 14th amendment? The statistics alone seem to show this clearly enough, and I believe we will prevail on this point without significant difficulty.

E. What remedy should be provided? The strongest possible remedy, from our point of view, would be the adoption of a plan presented by us for congressional redistricting, and the appointment of a master to handle the state redistricting. I believe it is absolutely essential for us to present our own congressional redistricting proposal, from two points of view: first, because unless we can show that a fairer manner of districting is possible, our attack on the existing plan will be much weaker; and second, so that we can ask for much more specific relief, and provide a standard by which the actual relief granted can be measured. In preparing our own plan, it may well be that we will have to make a decision between having one district in the delta which will be heavily Negro in which we have a realistic chance of electing a candidate, and four others with white majorities, or two districts in the delta both with paper Negro majorities but with smaller ones, thus reducing the chance of electing a representative from either one. Check Fishman in Washington is now working on several alternatives and we will have to look at them when they come in. We should also continue to pursue the argument that this legislature, having been illegally elected, was incapable of taking any valid action whatsoever; I believe placing any major emphasis on this, either in evidence or in argument, would be futile and diversionary however as a realistic matter. Further, realistically, the form of remedy has been held, under all of the cases, to be very discretionary, and it may well be that we prove it but get inadequate relief from the trial court, in any event we may have to fight the question of remedy further.

The issues of fact are relatively simple, although the problems of evidence are not. The evidence that I believe we should present, and tentatively in the following order, is this:

1. Our individual plaintiffs should testify, establishing their residence and right to vote in districts under-represented in the state legislature, their color, and the denial of their right to vote for the present legislature.

2. Larry Guyot, and/or other representatives of the MFDP, should testify as to what the party is and what the character of its membership is (the defendent's motion to drop MFDP as a party plaintiff has not yet been ruled on by the court, and may be granted; I believe we should have testimony from party representatives in any event). We should also try to get in their opinion of the consequences of the existing districting.

3. Census figures showing population with racial breakdowns for all counties and towns in Mississippi should be introduced. I am going to call McLenden, who apparently has been assigned by the Attorney General's office to handle the case, to obtain his agreement to introduce the figures by stipulation; failing this, I will subpoena the Secretary of the State of Mississippi to bring them.

4. Both the present congressional redistricting and the present state house and senate districting should be introduced, together with the prior districting arrangements. Again, if McLenden does not agree to do this by stipulation, I will do it through the Secretary of State's office.

5. We will subpoena the clerk of the State House and Senate to bring with him all records of the debates, minutes, etc. This will basically give us the various versions of the various bills for the record, and will further establish that no formal minutes or transcripts are in existence, so that we will be able to use outside evidence on the debates of the legislature, etc. The clerk can further be asked whether there are any Negro members now sitting in with the House or the Senate, to show the effect of the illegal manner of election of the present legislature.

6. Newspaper reporters who have covered this session of the legislature might well be the best available witnesses on the intent and purpose of the legislature in drawing up the new redistricting bill. I believe we will have to subpoena them in, and their testimony is of course unpredictable. We should further subpoena in

an appropriate official of the newspaper to identify clippings so that they may be offered directly into evidence; I am arranging for the newspapers ~~for the relevance~~, to be checked thoroughly in Jackson so that we will know what we want. This question of legislative intent is of course the most difficult question of proof that we have. This is so partly because of the undoubted unwillingness of anyone participating or close to the scene to speak honestly or openly about it; it is however further complicated by the fact that the really rabid bill was the House version, which would have established five majority white districts, and it was the somewhat milder Senate version that was finally adopted, partly with the argument that the Court would never uphold the wildly gerrymandered provisions of the House bill. Thus no doubt much testimony will be that race was indeed considered as a factor, but in the House bill and rejected!

7. The question of whether we should subpoena the individual legislators is still a somewhat open one. The likelihood that they will testify honestly and directly contrary to their own interests is of course slight, as far as direct questions are concerned; on the other hand, there is a possibility that they may trip themselves up on the witness stand. There is on the ~~other~~ (third) hand the danger that their negative testimony will be relied on by the court to find no illegal intent, and it is my present inclination to feel that we should not take the risk, and should either seize the opportunity to cross examine them if the State puts them on, or, if it does not, argue that its failure to put them on is itself evidence of an improper intent. The burden of proof question on this point is still a cloudy one, but right against Rockerfeller specifically would not sustain the plaintiffs' contention that a statistical showing of discriminatory effect placed the burden of proof on the defendents to show some other motive.

8. I am trying a number of contacts right now to see what type of expert evidence we can present. Such evidence should cover three points: First, that this legislature, like every legislature preceeding it, has had a major concern with preserving white domination, and that this concern has been a factor in its decision on any question which could effect Negro-White relations. Second, the expert testi-

mony should be that reapportionment has historically in the past been used as a tool for other purposes, as for instance in 1962 when Frank Smith's district was eliminated, and that the present district boundaries reflect a clear continuance of such use of the power to redistrict. Finally, such expert testimony should cover the point that the present boundaries are not the natural boundaries in any sense, but rather chopped off and cut across by traditional, historical, social and economic regions of the state. A review of previous district lines will also be helpful here. If we can get it in, such expert might further comment on whether the plan results in a fair representation of all of the appropriate interests in the state, but I think it is unlikely that this will be permitted. I am checking with Professor James Silver, the Dean of the University of Mississippi Law School, and several others whose names I became familiar with in connection with the Dennis and Johnson case, and we will use whatever we can get. Any suggestions on leads in this area would certainly be very helpful.

9. Finally, as background both for the policy of the State of Mississippi and the illegality of the manner of election of its present legislature, we can ask the court to take judicial notice of the findings and decisions in a large number of cases involving Mississippi, a fairly complete list of which we have prepared.

I would certainly appreciate any of your comments or additions to any of the foregoing, or your further suggestions on any aspect of the case. Our procedural posture right now is a rather unusual one; there is a motion for summary judgment on the congressional redistricting provisions pending, therefore I expect to file an answer, as well as an amendment to our complaint challenging the new redistricting, today, in the amendment being in the form already circulated to you. There are a variety of preliminary motions, including a motion to dismiss, to drop parties, etc. still pending which have never been ruled on, and no answer has yet been filed! Nevertheless, the case is set down for trial for the 15th, and I propose to go forward on the assumption that the court realizes the status of the pleadings and is willing to try it on that basis, as certainly I believe we should be, rather than to have further procedural delays in having the case heard.

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1909-1961

H. JOHN WEISMAN
FRED B. ROSNICK
PETER MARCUSE
NORMAN S. DRUBNER

ROBERT J. CREAN
THOMAS A. FINNERAN

December 30, 1966

Mr. Alvin J. Bronstein
603 North Farish Street
Jackson, Mississippi

Dear Al:

In a bow towards compliance with the rules of the District Court, I wonder if you would ask Jess Brown to sign the one copy of the Brief attached and send it to the Clerk of the District Court in Jackson. In view of the fact that we had only three days to prepare the Brief, I was forced to send the other directly to the judges without his signature.

I think you will see from this Brief the extent of the challenge we might be able to mount on the racial gerrymandering question. The clippings only contained one or two items of potential usefullness. While the official record of the session might be worth checking, as you suggested, I am afraid we will not find much of help there either.

I am not at all certain that we should pursue the issue of racial gerrymandering on the state legislature if we lose in the District Court, because it is a weak case and if the two are heard together, I believe it will weaken rather than strengthen the stronger of the two. I think our final decision will have to be based on whether we can come up with a clearly superior plan or not,and I am going to try to do some work on this over the next week. If anyone down there could try his hand also, it would be worth doing.

Since the decision will effect what we will do on the hearing which is now scheduled, I believe, for January 9th in Jackson, I suggest that you give me a ring as soon as you have had a chance to review the matter.

Very truly yours,

Peter Marcuse

PM:ek
Inclosure
cc: Henry Schwarzdchild
Arthur Kinoy
Carl Rachlin
Dean McKay

Mississippi
Reapportionment

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H. JOHN WEISMAN
FRED B. ROSNICK
PETER MARCUSE
NORMAN S. DRUBNER

ROBERT J. CREAN
THOMAS A. FINNERAN

dic. Jan. 9, 1967
January 11, 1967

Mr. James Lewis
Lawyers Constitutional Defense Committee
603 North Farish Street
Jackson, Mississippi

Dear Jim:

I attach a copy of the bibliography McKay gives for Mississippi. If you can get any of these items, they might be of real interest.

I understand that you will further try to get together and send to me the following:

1. Copy of answer to our amendment to our complaint.

2. Census figures from the 1965 population estimates, introduced by the defendants at the trial on Monday.

3. A list of the items from the House and Senate records which we will introduce, and

4. A copy of the accurate results of the primary and general elections of 1966, by county.

Needless to say, it was a great pleasure meeting you and working with you on the case. I think actually there is no doubt whatsoever as to the outcome, in view of the Supreme Court's decisions handed down the same day; I only wonder whether Judge Coleman had an indication that they were on their way from the questions he asked!

I would think that today's Supreme Court's decisions in effect exclude our ability to challenge the racial character of the next Mississippi State apportionment. I assume that the Court will now enter its own apportionment decree, either asking counsel to submit plans or without going through that formality. Whatever the result, we will not have available the argument that the legislature with all its history of discrimination, deliberately intended to reduce the Negro vote, and I am not sure how the United States Supreme Court would see an accusation that the District Court deliberately discriminated in the plan it itself established! If Coleman were foolish enough to indicate in his decision adopting his own plan that he followed

as closely as possible the Legislature's lines, we might still have a chance, but I would think such a comment would be extremely unlikely.

In any event, it was good seeing you; give my regards to Al and Juli and tell them I was sorry not to have been able to say good-bye.

Sincerely yours,

Peter Marcuse

PM:ek

cc: Henry Schwarzschild
Arthur Kinoy
Carl Rachlin

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January 26, 1967

MEMORANDUM

To: Carl Rachlin

Copy to: Peter Marcuse

Subject: Connor v. Johnson

Will you be good enough to comply with Miss Lazowski's request herein?

I have taken the liberty of filling out the back, indicating that counsel to be notified is Peter Marcuse.

H.S.

Contributions to LCDC of ACLU are tax-deductible.

SEDFRE

OLIVER, BILLY RAE VS. STATE OF FLORIDA, 1969-1970

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Please Retain Original Order

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT, IN AND FOR LEON COUNTY, FLORIDA.

STATE OF FLORIDA,

Plaintiff,

vs.

BILLY RAY OLIVER,

Defendant.

MOTION FOR A NEW TRIAL

Comes now the defendant, having been found guilty of Murder in the First Degree by a jury verdict dated May 12, 1969 and his time for filing this motion having been extended by the Court, by and through his undersigned counsel, and moves that the Court grant him a new trial on the following grounds:

1. The verdict is contrary to law and to the weight of the evidence.

2. The Court erred in the following matters of law:

   a. In refusing to grant the defendant's motion for a change of venue.

   b. In refusing to grant the defendant's motion to quash the indictment.

   c. In refusing to grant the defendant's motion for separate jury trials to determine the issues of guilt and punishment.

   d. In refusing to grant the defendant's motion to exclude capital punishment from the case.

   e. In refusing to grant the defendant's plea in abatement on the grounds that Negroes were systematically excluded from the grand jury.

   f. In refusing to grant the defendant's motion to quash the jury venire and panel on the grounds that Negroes were systematically excluded.

   g. In refusing to grant the defendant's motion to sequester the jury panel during the voir dire examination of prospective jurors.

   h. In refusing to grant the defendant's challenges to prospective jurors for cause.

   i. In refusing to grant the defendant's motion to suppress confessions and in permitting the confessions to be received in evidence.

j. In permitting the introduction and receipt into evidence of confessions and admissions prior to the state's proving corpus delecti.

k. In refusing to grant the defendant's motions for a mistrial.

l. In refusing to grant the defendant's motion for a directed verdict of acquittal.

m. In refusing to sustain other and various defendant's objections during the course of the trial.

3. The Court erred in refusing to grant the defendant's requests for jury instructions numbered 1. through 74. inclusive.

4. That by virtue of prejudicial pretrial publicity, the defendant did not receive a fair and impartial trial.

Respectfully submitted

Dated May 19, 1969

_____

Johnson & Marshall
625 W. Union Street
Jacksonville, Fla. 32202

Alvin J. Bronstein
78 Mt. Auburn Street
Cambridge, Mass. 02138

Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the State Attorney, Leon Courthouse, Tallahassee, Florida by first class mail this _____day of May, 1969.

_____
Attorney for Defendant

IN THE DISTRICT COURT OF APPEAL

FIRST DISTRICT, STATE OF FLORIDA

BILLY RAY OLIVER,

Appellant,

-vs- CASE NO. M-142

STATE OF FLORIDA,

Appellee.

JAMES COLBERT,

Appellant,

-vs- CASE NO. M-143

STATE OF FLORIDA,

Appellee. (Consolidated causes)

APPEAL FROM THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT, IN AND FOR LEON COUNTY, FLORIDA

APPELLANTS BRIEF

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INDEX

ndex ---------- i

'able of Authorities ----------iii
Cases ----------iii
Statutes ---------- v
Other Authorities ---------- v

tatement of the Case ---------- 1

rgument ---------- 4

I Both Appellants were Denied their Rights to a Fair Trial before an Impartial Jury by the Failure to Grant the Motions for a Change of Venue ---------- 4

II The State and Federal Constitutional Rights of Both Appellants Were Violated by the Failure to Grant the Motions for Separate Jury Trials to Determine the Issues of Guilt and Punishment and to Exclude Capital Punishment from the Cases ---------- 18

III The State and Federal Constitutional Rights of Both Appellants Were Violated by the Manner in Which the Grand and Petit Juries Were Selected ---------- 20

IV The Trial Court Erred in the Case of Appellant Colbert in Refusing to Grant the Defendants Challenge for Cause to Prospective Juror, Mrs. Myrtice Poppel ---------- 25

V The Court Below Erred in Refusing to Grant the Appellant's Motions to Suppress Admissions and Confessions and in Permitting the Same to be Received in Evidence ---------- 28

VI The Court Below Erred in the Case of Appellant Oliver in Refusing to Grant Defendant's Motion for a Mistrial When It Developed During the Trial that the Prosecution Had Violated a Pre-Trial Order by Furnishing the Defense with Only a Part of a Statement Taken From the Appellant. The Court Erred Further in Failing to Strike this Incomplete Statement from the Record and then Permitting the Prosecution to Play the Tape Recording of this Statement to the Jury after having Allowed the Prosecution to Publish a Written Transcript of the Tape to the Jury ---------- 51

VII The Court Below Committed Reversible Error by Permitting the State to Impeach the Witness, Martha Peterson, with a Prior Inconsistent Statement at a Time when the Witness had Given No Testimony Adverse to the Interest of the State ---------- 53

VIII. The Court Erred in Permitting Ronny Hayes to Testify for the State when He had been Sitting in the Courtroom after all the Witnesses had been Sequestered ---------- 57

IX The Court Below Erred in Refusing to Grant the Various Appellants Motions for a Mistrial and in Refusing to Sustain Various Appellants Objections during the Course of the Trials ---------- 61

X The Court Below Erred in Refusing to Grant the Appellants Requests for Jury Instructions ---------- 64

Conclusion ---------- 64

Certificate of Service ---------- 65

TABLE OF AUTHORITIES

CASES	PAGE
Abram v. State, 216 So. 2nd 498 (1968)	48
Adams v. State, 34 Fla. 185, 15 So. 905	54
Ashcroft v. Tennessee, 322 U.S. 143 (1944)	46
Blackwell v. State, 101 Fla. 1009, 132 So. 468 (1918)	26
Brown v. Mississippi, 297 U.S. 278 (1936)	39,43,46
Cassell v. Texas, 339 U.S. 282 (1949)	24
Clewis v. Texas, 386 707 (1967)	40,45
Davis v. Davis, 361 F 2nd 770 (5th Cir. 1966)	22
Davis v. North Carolina, 384 U.S. 737 (1966)	39
Duggan v. State, 189 So. 2d 890 (Fla. D.C. App., 1st Dist. 1966)	52
Escobedo v. Illinois, 378 U.S. 478 (1964)	39,46
Estes v. State of Texas, 381 U.S. 532 (1965)	16
Foremost Dairies, Inc. v. Cutler, Fla., 212 So. 2d 37, (1968)	55
Gallegos v. State of Colorado, 370 U.S. 49 (1962)	39,45,50
Haley v. Ohio, 332 U.S. 596 (1948)	39,44,45,46,50
Haynes v. Washington, 373 U.S 503 (1963)	39,45
Hernandez v. State, 22 So 2d 781, en banc (Fla. 1945)	54
Hill v. Texas, 316 U.S. 400, (1942)	22
Holder v. State, 187 So 781 (Fla. 1939)	59
Holt v. People, 14 Mich., 224, (1950)	27
Hulst v. State, 123 Fla. 315, 166 So. 828	42
Irwin v. Dowd, 366 U.S. 717 (1961)	13,15
Jackson v. State, 177 So 2d 353 (D.C. 3rd, Fla., 1965)	60
Johnson v. New Jersey, 384 U.S. 719 (1966)	39,47
Johnson v. Zerbst, 304 U.S. 458 (1938)	49
Killough v. U.S., 315 F 2nd 241 (D.C. Cir. 1962)	40
Lee v. State, 96 Fla. 59, 117 So 699 (1928)	42
Louette v. State, 152 Fla. 495, 12 So. 2nd 168 (1943)	52
Mallory v. U.S., 354 U.S. 449 (1957)	40
Mankus v. State, 161 So. 2nd 547 (Fla. 1964)	50
Marshall v. U.S., 360 U.S. 310, (1959)	8
Massiah v. U.S., 377 U.S. 201 (1964)	40
Maxwell v. Bishop, O.T. 1968, No. 622, reset as O.T. 1969, No. 13	19

	PAGE
Melbourne v. State, 51 Fla. 73, 40 So. 189 (1906)	26
Miles v. State, 36 So. 2nd 182 (1948)	42
Miranda v. Arizona, 384 U.S. 436 (1966)	40,46,47,48
Mitchell v. Johnson, 250 F. supp., 117 (M.D. Ala. 1966)	24
Norris v. Alabama, 294 U.S. 587 (1935)	22
O'Connor v. State, 9 Fla. 222 (1860)	26
Pamplin v. Mason, 364 Fed 2d 1 (5th Cir., 1966)	16
Patterson v. Colorado, 205 U.S. 454 (1907)	14
Patton v. Mississippi, 332 U.S. 463 (1947)	22
Payne v. Arkansas, 356 U.S. 560 (1958)	39,45,46
Piccot v. State, 116 So. 2d 627 (1959)	26
Pullum v. Greene, 396 F 2nd 251 (5th Cir., 1968)	23
Rankin v. State, Fla. 143 So. 2nd 193 (1962)	55
Reece v. Georgia, 350 U.S. 85 (1955)	22
Rideau v. State of Louisiana, 373 U.S. 723 (1963)	15
Schneble v. State, 201 So. 2nd 881 (Fla. 1967)	39,42
Scott v. Walker, 358 F. 2nd 561, (5th Cir. 1966)	22
Shinall v. State, 187 So. 2nd 840 (1966)	22
Sims v. State, 184 So. 2nd 217 (1966)	42
Singer v. State, 109 So. 2nd 7, (Fla. , 1959)	15
Smith v. State, 135 Fla. 835, 186 So. 203 (1939)	42
Smith v. Texas, 311 U.S. 128 (1940)	24
State v. Jackson, 43 N.J. 148, 302 A 2d 1, 11 A.L.R. 3d 851-2 (1964)	27
Thalheim v. State, 38 Fla. 169 20 So. 938 (1896)	52
Traub v. Connecticut, 374 U.S. 493 (1963)	40
Tumey v. Ohio, 273 U.S. 510 (1927)	17
Turner v. Fouche, ___U.S.____,No. 23 O.T. 1969, 38 LW 4090 (1-20-70)	22
Turner v. Pennsylvania, 338 U.S. 62 (1949)	45,46
United States v. Chapman, 158 F. 2d 421, (10th Cir. 1946) 1	26
Ward v. Texas, 316 U.S. 547	45
Watts v. Indiana, 338 U.S. 49 (1949)	39,43,45
Whitus v. Georgia, 385 U.S. 545 (1967)	22,23,24
Williams v. State, 100 Fla. 1054, 132 So. 186	39,42
Wong Sun v. U.S., 371 U.S. 471 (1963)	40
Woods v. State, 211 So. 2nd 248 (1968)	48
Young v. State, 99 So. 2nd 304 (D.C. 3rd Fla., 1957)	59

STATUTES	PAGE
7 F.S.A. 90.09	54
23 F.S.A. 269, Sec. 913.03	26
25 F.S.A. 507	25
33 F.S.A. Rule 1.220, Discovery	51

OTHER AUTHORITIES

Free Press And Fair Trial: An Evolving Controversy, 19 U.Fla. L. Rev. 660 (1967)	13
Standards Relating To Fair Trial And Free Press, Approved Draft; American Bar Association, P. 5, (March, 1968)	10
The Coerced Confession Cases In Search Of A Rationale, 31 U. of Chi. L. Rev. 313 (1964)	43
Weclew, Fair Trial Equal In Value To Free Press, 19 DePaul L. Rev. 353 (1967)	14

STATEMENT OF THE CASE*/

Early in the evening of April 4, 1968, Dr. Martin Luther King, Jr., was assasinated in Memphis, Tennessee. When the news reached Tallahassee later that evening, there was an outbreak of shooting, rock throwing, fires, and in general, a serious civil disorder which continued into the early hours of April 5, 1968 and to a much lesser extent the night of April 5. Sometime between 2:00 a.m. and 2:30 a.m. on April 5, a fire started in a grocery store owned and operated by Travis Crowe, Jr., the fire or smoke from the fire spread to a dwelling house attached to the rear of the store building and Travis Earl Crowe III, who had been sleeping in the dwelling, died there of burns and smoke inhalation. (O-TR II, pp. 13, 61) (States Exhibit No. 11)

On May 22, 1968 and May 24, 1968, respectively the Appellants Billy Ray Oliver, age 15, and James Colbert, age 17, were taken into custody by the Leon County Sheriffs office, confined to the Leon County Jail and interrogated for long periods of time with resulting incriminating statements.**/

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*/ Because of the separate Records on Appeal and trial transcripts for each Appellant, we prefix each record citation with an "O" or a "C" to designate the Oliver or Colbert volume, as the case may be. The pretrial hearings were all held jointly for both Appellants and we designate those references by the hearing date. Where the facts proved were the same at both trials we generally cite only one of the trial transcripts.

**/ In order to present the multiple issues on this appeal clearly to this Court, we have included an extensive statement of facts, with record citations, under each of the separate points of argument. For example, the complete facts of the arrests, interrogation and the circumstances surrounding the statements by the Appellants are set out in Section V of the argument, infra. We have therefore included only a very general statement of the case in this section.

A County Judge's warrant was issued against the Appellants on May 30, 1968, (O-R, p. 3; C-RI, p. 3) a preliminary hearing was held in the County Court on June 26, 1968 and the Appellants were indicted on December 6, 1968 by a Leon County Grand Jury for Murder-First Degree by "effecting the death of Travis Earl Crow, III. . . by willfully and maliciously setting fire to and burning the building. . . then and there being occupied by the said Travis Earl Crow, III." (O-R pp. 1, 2; C-RI pp. 1,2)

There were various pre-trial procedings including motions for production of statements or confessions, motions to suppress confessions, motions to quash the indictment and the petit jury panel on the grounds of systematic exclusion of Negroes, motions for discovery, motions addressed to the capital punishment issues and motions for a change of venue. These matters are discussed separately in the appropriate sections of the argument.

Applications for bail were made on January 17, 1969 and after a hearing bail was denied for appellant Oliver and bail was set at $7,500 for Appellant Colbert.

The case of Appellant Oliver came to trial before the Court and a jury on May 7,8,9,10 and 12 of 1969 and the jury found the Appellant guilty of Murder in the First Degree and a majority of the jury recommended the Appellant to the mercy of the Court. (O-R, pp. 93, 121). A motion for a new trial was filed on May 19, 1969 and after a hearing was denied. (O-R, pp. 123, 126) On July 11, 1969 the Court below sentenced the Appellant to life imprisonment and the Appellant is presently in custody on that judgment. (O-R, pp. 127-129) A Notice of Appeal was filed on August 6, 1969, (O-R, p. 136) an order of insolvency was entered on August 7, 1969, (O-R, p. 137) and Assignments of Error were filed on August 10, 1969. (O-R, p. 138, 139)

The case of Appellant Colbert came to trial before the Court and a jury on July 14, 15 and 16 of 1969 and the jury found the Appellant guilty of Murder in the First Degree and a majority of the jury recommended the Appellant to the mercy of the Court. (C-R II, pp. 390, 432) A motion for a new trial was filed on July 28, 1969 after an extension of time had been granted and same was denied. (C-R II, pp. 391, 392, 435) On August 7, 1969, the Court below sentenced the Appellant to life imprisonment and the Appellant is presently in custody on that judgment. (C-TR II, pp. 393-395) A Notice of Appeal was filed on August 7, 1969, (C-R II, p. 439) an order of insolvency was entered on August 11, 1969 (C-R II, p. 440) and Assignments of Error were filed on August 18, 1969. (C-R II, pp. 441, 442)

Orders were entered in this Court by the Honorable Dewey M. Johnson, Chief Judge, consolidating these causes for the purpose of appeal, extending the time to March 1, 1970 for Appellants to file their brief and enlarging the brief to not exceed seventy-five (75) pages.

GUMENT

I

BOTH APPELLANTS WERE DENIED THEIR RIGHTS TO A FAIR TRIAL BEFORE AN IMPARTIAL JURY BY THE FAILURE TO GRANT THE MOTIONS FOR A CHANGE OF VENUE.

THIS POINT REFERS SPECIFICALLY TO ASSIGNMENTS OF ERRORS NOs. 2. a. IN BOTH CASES.*/

A. Facts

A motion for a change of venue alleging prejudicial pre-trial publicity and hostility in the community against the Appellants was filed in both cases. (O-R. p. 82; C-R. II p. 306) Affidavits in support of the motion were filed at the same time. (O-R. pp. 83-85; C-R. II pp. 307-9) A hearing on the change of venue motion was held in the Court below on April 15, 1969. Nine newspaper stories from the Tallahassee Democrat were admitted as evidence at the hearing as the Defendants exhibit No. 1. (Hearing, 4/15/69, p. 3) It was also stipulated that the Tallahassee Democrat was the only newspaper published in the city of Tallahassee. (Hearing, 4/15/69, p. 4) After the taking of testimony the motion was denied. (Hearing, 4/15/69, p. 56)

The motion was renewed at the end of the voir dire examination in the Oliver trial when it developed that each of the thirty-seven prospective jurors who were questioned had read about the case in the local newspapers and many had also heard about the case on radio and television. (O-TR. I, p. 194) The motion was again denied. After the Oliver trial and prior to the Colbert trial the motion was renewed in the latter case and affidavits in support of the renewal of the motion were filed. (C-R II, pp. 361-2, p. 389) Excerpts of news stories from the Tallahassee Democrat reporting on the Oliver trial were filed in support of this motion. (C-R II, pp. 377-85) The Court below entered an

*/ The Court below ruled that the evidence taken on this issue would be applicable to both cases. (Hearing, 4/15/69, p. 2)

order denying the renewed motion for a change of venue in the Colbert case. (C-R II, p. 386)

At the hearing on April 15, 1969, three witnesses testified for the Appellants and each stated that they had read about the case and had read the printed confession in the Tallahassee Democrat of the Appellant, Oliver, and had heard about the case on radio and TV. (Hearing, 4/15/69, pp. 5, 6, 11, 15, and 16) Each of the witnesses testified that there was hostility, tension and prejudice between the races in Tallahassee. (Hearing, 4/15/69, pp. 7, 12, 13 and 19) And one of the witnesses testified that he heard some people at the Trailways bus station in Tallahassee: "...say they disagree with what happened and what they do if they could get a hold of 'em." (Hearing, 4/15/69, p. 13) One of the witnesses who teaches in the Planning Department at Florida State University and because of his academic work is very concerned with discussions in the community and attends meetings and neighborhood groups, (Hearing, 4/15/69, p. 17), testified that after the particular incident of last year, referring to the Crowe fire, there was a "...hardening of positions" in the community. (Hearing, 4/15/69, p. 19)

Three witnesses testified at the hearing for the State. The first, Mr. Bethea, after testifying that he had read about the case and the confession of Oliver in the newspapers, stated that: "I don't think anyone can remove from their mind what they had actually read and saw." (Hearing, 4/15/69, p. 29) This same witness testified about the conclusions he drew from the newspaper story by saying: "Well, it was obvious, it was in the paper, it was a fire bomb..." (Hearing, 4/15/69, pp. 35, 36) Even the Prosecutor, in questioning the next witness for the State, Mr. May, asked the witness if he had read the newspaper reports "...of the alleged fire bombing of the Crowe store." (Hearing, 4/15/69, p. 38) This witness also

testified that he had heard people in Tallahassee talking about the case and expressing opinions about the case (Hearing, 4/15/69, p. 39) and that he had seen the printed confession in the Tallahassee Democrat and had discussed this confession with friends and acquaintances. (Hearing, 4/15/69, p. 40) Mr. May further testified that: "I could not forget that I read the confession..." (Hearing, 4/15/69, p. 41) This would be the case, he testified, even though he was sitting on the jury and no confession were introduced into evidence during the trial. (Hearing, 4/15/69, p. 41)

We submit that the testimony of the last witness, Mr. Desilets, who was the only witness for either party who testified that he had never been aware of the confession in the newspapers until that morning in court (Hearing, 4/15/69, p. 45) can be dismissed in the light of his incredible testimony thereafter. He insisted in answer to a number of questions that he had only had one conversation about the Crowe case which was the morning after it happened (Hearing 4/15/69, p. 45) and swore that ever since that time he had never, ever, discussed this case or had a conversation about it with anyone. (Hearing, 4/15/69, pp. 45-6) This assertion is incredible to the point of not being worthy of belief. He did, however, state that if he had read about the confession and he then sat at the trial where no confession was introduced into evidence, he could not dismiss the knowledge of the confession from his mind. (Hearing, 4/15/69, p. 47)

The news stories from the Tallahassee Democrat, which were introduced as Defendant's Exhibit 1, are extremely significant in two respects. First, each one of the stories from the very first story the morning after the incident referred to the "fire bombing" death of the Crowe boy or the "fire bomb" incident. This, of course, is extremely prejudicial pre-trial publicity since the issue of

whether or not there was in fact a fire bomb or any arson would be a crucial and controverted item of proof at the trial.*/ We submit that the State proved the essential criminal element of arson not at the trial but in the newspapers before the trial ever began.

The second and even more prejudicial aspect of the newspaper stories was the issue of June 27, 1968, in which a transcript of Oliver's alleged confession in question and answer form was reprinted in the newspaper. A total of three pages was devoted to this in the paper, the first page being a summary and the next two pages setting out the most damaging parts of the alleged confession. In this alleged confession Oliver implicates himself and others including James Colbert, and states a motive for the crime and describes the crime itself. We submit that there can be no more prejudicial pre-trial publicity than the printing of the confession. This is particularly so when the admissability of the alleged confession became an issue in the trial as it is an issue on this appeal.

Of course, the error is compounded in connection with the renewed change of venue motion for the Appellant, Colbert, after the Oliver trial. The public had just finished reading summaries of the evidence against Oliver and had just seen him convicted of murder when Colbert was put on trial. The public knew that the evidence against Oliver was substantially the same as that which would be introduced against Colbert. (see the Democrat of July 15, 1969, headlining: "Colbert Trial Is A Repeat; Testimony Like In Oliver Case.")

Since each of the prospective jurors in the Oliver trial admitted reading about the case in the newspaper, and since the Oliver trial itself was given extensive coverage in the Tallahassee Democrat, we can safely assume that all of the

---

*/ This is discussed more fully in the section of the brief devoted to corpus delecti.

prospective jurors in the Colbert trial read the stories about the Oliver trial. We respectfully point out to the Court in connection with the news stories of the Oliver trial that were filed in the Court below (C-R II, pp. 377-85) that in the stories of April 17, May 7, 8 (2 editions), 10, 11, 12 and 13 there is reference to Defendant, James Colbert, of a prejudicial nature. In particular, the news story of May 10 refers to a confession of Oliver which implicates the Defendant, Colbert. It is submitted that said confession could not be used in evidence against the Appellant, Colbert, and that prospective jurors reading that story would become extremely biased. The final item of proof, the extreme significance of which will be discussed subsequently when we discuss the relevant law on change of venue, was the affidavit filed in each of the cases reporting what a person in the courtroom had overheard another person say during the final arguments to the jury in the Oliver case:

> "I wanted to be on that jury so bad, and convict that boy. If they had asked me did I know anything about it I would have told them: 'No, I don't know anything about it and I didn't read anything either.' But they didn't get to me." (O-R, p. 125; C-R II, p. 389)

B. Argument

A proper venue insures that the possibility of a fair trial will not have been foreclosed. It guarantees that the procedural safeguards which are the pride and power of our legal system, such as the rules of evidence and the right to cross-examine, will prove more than empty formalities. The jurors' minds must be open on the issues which will determine guilt or innocence, for the State is required to assemble its jigsaw of evidence within the rules of Court, not in the pages of the press, where a defendant has no way to protect himself. As was said in Marshall v. United States, 360 U.S. 310, at 312, 313 (1959):

"The prejudice to the defendant is almost certain to be as great when the evidence reaches the jury through news accounts as when it is a part of the prosecution's evidence...It may indeed be greater, for it is not then hampered by protective procedures."

We have set out in the factual part of this section the extent of the prejudicial news coverage in this case.

The Courts have found it analytically helpful to separate out certain qualities of newspaper coverage as bearing on the question of whether or not it is prejudicial. We will describe the coverage in this case in terms of these qualities:

1. Extent of dissemination. The higher the percentage of people in an area who read a paper, the greater will be its influence on potential jurors.

Here, it was stipulated at the venue hearing that the Tallahassee Democrat is the only newspaper published in the city of Tallahassee, Florida. Although other newspapers are read, on this local incident the Democrat was the primary molder of public opinion.

There is ample proof that, not only was the community in general aware of what the paper said about these cases, but the very people who were chosen as jurors admitted that they had read the news accounts. At the venue hearing, all three of the State's witnesses stated that they had followed the cases in the papers. Most important, all the panel members questioned on voir dire for the selection of these juries admitted that they had read about these cases.

This is of great significance, for it means that those who sat in judgment on Oliver and Colbert had read things which, we shall show, were prejudicial.

2. Nearness to time of trial. The less time there is between the appearance of an article and the holding of a trial, the greater will be the impact of

the article upon the trial.

The news coverage here followed the usual pattern of headlining the fire, following the progress of the police in finding suspects, and then having a resurgence in coverage as the pre-trial hearings were held.

These articles kept Oliver in the public's eye. Colbert, though, suffered as greatly as is possible from the timing of publicity, for he was tried immediately after Oliver was.

3. Co-operation by the Authorities. The more official the source of an article, the more likely a reader will be to believe it. This places a special responsibility upon law enforcement officials to avoid making or releasing prejudicial statements.

The American Bar Association recognizes that this responsibility is a grave one. On February 19, 1968, its House of Delegates approved a set of standards relating to free press and fair trial, as formulated by a distinguished committee headed by Judge Paul Reardon. One of these standards provides that "...no law enforcement officer (this includes judges and judicial clerks, as well as police officers) shall release or authorize the release of any extrajudicial statement...concerning: (2) The existence or contents of any confession, admission, or statement given by the accused..."*/

In these cases the Tallahassee Democrat obtained the transcript of Oliver's confession as given at a preliminary hearing, and published it on June 27, 1968.

As we shall show, there is no more damaging information, and none more calculated to prejudice the community, than the text of a defendant's confession. Here, the paper must have obtained it from some official source and it was given as official and this after it had been introduced in a mere preliminary hearing.

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*/ Standards Relating to Fair Trial and Free Press, Approved Draft, American Bar Association, p. 5, (March 1968)

4. Damning nature of printed material. The more specific and accusing the articles printed by a paper, the greater will be the prejudice to a defendant. In other words, if a paper reveals convincing bits of information, such as would carry weight if properly submitted to a jury, the public's minds are quite likely to be made up before a trial begins.

This final element is the most important one by far, because news coverage can be satisfactory under all of the previous criteria and still be prejudicial.

The present trials were contaminated by press publicity on two points, both of which were vital to the later determinations of guilt or innocence.

First, the Democrat from the very beginning referred to the death of the Crowe boy as being due to a "firebombing." This was prejudicial in the extreme.

This was not the ordinary situation, where it is known for certain that a crime of a particular type has been committed, and the question is whether or not the suspect was the one who did it. Rather, this was a situation where there may not have been any crime, for the fire which took Travis Crowe's life may well have arisen from the ordinary causes which start most fires. The burden was upon the State to prove that there had been a firebombing, that the other possibilities were not the culprit. The issue was the key to the conviction of these boys, and yet the State was able to give only circumstantial evidence -- and not very well investigated evidence (see the section on corpus delecti) for their contention.

Under these circumstances, it was exceedingly important to a fair trial that the jurors have open minds on the issue, that the State be required to bear its burden with no assist from preconceived notions on the part of the jury. Yet the Democrat admitted of no doubt on this issue. (See Defendant's Exhibit #1 on the venue hearing).

Can anyone have read the statements in the Democrat and still have kept an open mind on whether there actually had been a firebombing? We submit that the answer is clearly negative, and that this was a great boost to the State in proving "beyond a reasonable doubt."

There are other reasons why these continual references to a "firebombing" prejudiced those who read them. Reading about a "firebomb" murder evokes deep emotions and makes a permanent impression on a man's mind. This is so for several reasons. A firebomb murder is an unusual event. It is spectacular. It is gruesome. It is usually set, as here, in a context of great tension -- Molotov cocktails have accompanied the most serious outbreaks of civil disorder and violence in this century. In this instance, it was associated with all the passions of racial hatred -- what event would more dramatically symbolize this than the throwing of a firebomb?

Our second objection is that the Democrat committed what is perhaps the most serious possible transgression of fairness: it printed nearly the entire "confession" by Billy Ray Oliver. This unfairness is so because a news article, or a bit of evidence, gains force from the depth of its detail, its relevance, and the certitude of its source. Indeed, even the State's witnesses at the venue hearing conceded the basic point that reading a confession would leave a lingering impression on their minds. Each of these men went on to state emphatically that he could be impartial at a trial.

The venue decisions have recently come to recognize that people are usually unable to communicate just how what he has read will affect him. In the first place, the usual process of questioning someone in open court has great built-in pressures. To ask, "Can you be impartial?" is about like asking, "Are you an honest person?" for impartiality is a basic ingredient of integrity and sophistication.

And when the question is put in a courtroom, with the witness already under oath to be honest, and with all his neighbors watching, the pressure upon him to answer in the affirmative is overwhelming. Irwin v. Dowd, 366 U.S. 717 (1961), a case in which 8 of 12 jurors had read newspaper accounts of the case, which included statements by the police that Defendant had confessed, spoke on this problem. The 8 jurors had said they would be impartial, but The Supreme Court reversed, saying:

> "The influence that lurks in an opinion once formed is so persistent that it unconsciously fights detachment from the mental processes of the average man." p. 727, and "No doubt each juror was sincere when he said that he could be fair and impartial to petitioner but the psychologoical impact requiring such a declaration before one's fellows is often its father." p. 728.

The witnesses for the State, in all candor, found themselves agreeing precisely.

The fact that a confession printed in the papers is later admitted at trial, does not cure the impression it makes. The damage is done when the public makes up its mind:

> "Even if the publicized confession is later admitted at trial, the prior publication may, nevertheless, deprive the defendant of his right to a fair hearing. The publicized confession may well become fixed in the minds of the jurors, since information read in a newspaper is not subject to cross-examination or other protective procedures." Free Press and Fair Trial: An Evolving Controversy, 19 U. Fla. L. Rev. 660, 666 (1967).

The previously mentioned guidelines formulated by the Reardon Committee for the American Bar Association, aimed at preventing the dissemination of information before trial which may prove prejudicial at trial, recognize that publishing a confession is the most prejudicial possible information. In fact, they regard the mere announcement that a defendant has confessed as being in itself prejudicial.

They also recommend the granting of a challenge for cause to any prospective

juror, "who has been exposed to and remembers reports of highly significant information,. such as the existence of contents of a confession...without regard to testimony as to his state of mind." (Id., p. 10)

C. Law

The basic ideal of our legal system was succinctly stated by Mr. Justice Holmes in Patterson v. Colorado, 205 U.S. 454, at 462 (1907):

> "The theory of our system is that the conclusions to be reached in a case will be induced only by evidence and argument in open court, and not by any outside influence, whether of private talk or public print."

American courts rely upon the device of changing venue to ensure such a result. Although this is not their only weapon, a change of venue strikes most directly and with least inconvenience at the damage done by prejudicial pre-trial publicity.

The standard for granting a change of venue has changed over the past several years.

More recently, it has been seen that wrongful use of the press can go far to destroy the right to a truly impartial trial, and that there is no strong Constitutional interest to be served by allowing prejudicial pre-trial publicity.*/

At the practical, everyday level, there has been a re-evaluation of the validity of the rationale for being slow to grant changes of venue. There are two: a feeling that every defendant should have a right to trial at home, and a desire to avoid the expense of moving a trial.

Section II, Bill of Rights, Florida Constitution, states that "in all criminal prosecutions the accused shall have the right to a ...trial by an impartial jury, in the county where the crime was committed..." We submit that this

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*/ See Weclew, Fair Trial Equal in Value to Free Press, 19 De Paul L. Rev. 353 (1967)

rationale makes little sense in today's world.

At any rate, the policy should not have force in a case such as this, where a defendant believes it to be in his self-interest not to be tried at home, and not for reasons of his general reputation. To the extent that we may, we disclaim our "right."

The other factor against changing venue was the time and expense involved in moving a trial. Again these may have been important in the days when travel was slow and bothersome and governmental budgets small, but we do not feel it carries far today, when weighted against the desirability of giving citizens fair trials. "A change of venue may sometimes inconvenience the State, yet we can see no way in which it can cause any real damage to it." Singer v. State. 109 So. 2d 7, at 14 (Fla. 1959)

The examination of venue by The Supreme Court of the United States has come in several steps, as follows:

1. Irwin v. Dowd, 366 U.S. 717 (1961) Here, the case had received great publicity. The prosecutor and police released to the press statements saying that the defendant had confessed to murder. 8 jurors said they had received from the news coverage the suspicion that defendant was guilty. All however, said they could be impartial.

The Supreme Court reversed, on the grounds that actual prejudice had been shown, and the disclaimers by jurors were not effective.

2. Rideau v. State of Louisiana, 373 U.S. 723 (1963). The charge was that the defendant had robbed a bank, killing in the process. a TV film was made in jail of the suspect confessing to the sheriff that he was guilty. This film was shown on area television.

The Supreme Court held that under such circumstances the possibility of there being a fair trial in the community was so slight that defendant need not demonstrate that the publicity had prejudiced the jurors. This was a giant step in changing the law on venue.

3. Estes v. State of Texas, 381 U.S. 532 (1965) This was the nationally famous Billie Sol Estes case. There were extensive pre-trial proceedings which were covered live, but a booth was made in the back of the courtroom so that TV pictures without sound could be taken. The State's closing argument was shown live.

The Supreme Court relied on Rideau, saying, "...this Court itself has found instances in which a showing of actual prejudice is not a prerequisite to reversal. This is such a case."

The Court emphasized the importance of pre-trial hearings to a defendant: "Pre-trial publicity can create a major problem for the defendant in a criminal case. Indeed, it may be more harmful than publicity during the trial for it may well set the community opinion as to guilt or innocence."

Of the lower federal Court cases in this circuit, the most significant is Pamplin v. Mason, 364 Fed 2d 1 (5th Cir., 1966). Defendant there was a black who had led the first sit-in in the history of the community. He was charged with attacking a policeman while in jail. The Court granted a change of venue, stating that there was a great deal of racial tension throughout the time of the trial, and that under Rideau and Estes there was no need to demonstrate a nexus bewteen the community prejudice and jury prejudice. In view of the racial context of this case, in the events of the night of the occurrence and the race of the deceased and the Appellants, the following language by the Court in Pamplin is particularly important:

> It is immaterial that the voir dire did not demonstrate community prejudice. Under Rideau, Estes, and Sheppard, it is unnecessary to prove that local prejudice actually entered the jury box. Moreover, Justice Clark has warned that in this type situation we must suspect the response of prospective jurors even on individual examination: "No doubt each juror was sincere when he said that he would be fair and impartial to petitioner, but the psychological impact requiring such a declaration before one's fellows is often its father." Irvin v. Dowd, 366 U.S. at 728. The Supreme Court's emphasis on the feeling in the community rather than the transcript of the voir dire finds ample justification in this case. Where racial feeling may be strong, the voir dire, let alone the group examination to which this defendant was restricted can hardly be expected to reveal the shades of prejudice which may influence a verdict. Due process of law requires a trial before a jury drawn from a community of people free from inherently suspect circumstances of racial prejudice against a particular defendant. Id at 11, 12 (Footnotes omitted).

The above language illustrates the importance of the affidavit concerning the comments overheard in the courtroom by a lady who"...wanted to be on that jury so bad, and convict that boy. If they had asked me did I know anything about it I would have told them: 'No,'..." (O-R, p. 125; C-R II p. 389)

This Court should take note of the language of Justice Clark in the Estes, supra, decision, when he referred to Tumey v. Ohio, 273 U.S. 510, 532 (1927) for the general rule that:

> Every procedure which would offer a possible temptation to the average man...to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice, clear and true between the State and the accused, denies the latter due process of law. 381 U.S. at 543, (Emphasis in original quotation).

We submit that more than a possibility of temptation to forget the burden of proof existed in this case -- it was a probability if not an actuality -- and the Court below erred in not granting a change of venue.*/

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*/ The trial judge himself took notice of the extent of newspaper coverage of the trial and the discussion in the community when he gave instructions on how the jury could spend its weekend. (O-TR VI, pp. 834-836)

II

THE STATE AND FEDERAL CONSTITUTIONAL RIGHTS OF BOTH APPELLANTS WERE VIOLATED BY THE FAILURE TO GRANT THE MOTIONS FOR SEPARATE JURY TRIALS TO DETERMINE THE ISSUES OF GUILT AND PUNISHMENT AND TO EXCLUDE CAPITAL PUNISHMENT FROM THE CASES.

THIS POINT REFERS SPECIFICALLY TO ASSIGNMENTS OF ERRORS NO.'S 2, c, AND 2, d, IN BOTH CASES.

In each case, a motion for a separate jury trial to determine the issues of guilt and punishment */ and a motion to exclude capital punishment from the case **/ were filed and denied by the courts below.

Appellants arguments on both of these motions are the same and consist of two points:

1) Florida's practice of allowing capital trial juries arbitrary power to choose between the penalties of death and imprisonment, unlimited by standards, directions or controls of any kind, violates the rule of law that is basic to the Due Process clause of the Fourteenth Amendment of the Constitution of the United States and the Declaration of Rights of the Florida Constitution.

2) Florida's single-verdict procedure, which requires the jury to determine guilt and punishment simultaneously in a capital case, and which requires a capital defendant to elect between the exercise of his privilege against self-incrimination and the presentation of evidence requisite to rational sentencing choice violates the Fifth and Fourteenth Amendments of the Constitution of the United States and the Declaration of Rights of the Florida Constitution.

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*/ Oliver, Record on Appeal, p. 7-9; Colbert, Record on Appeal, Vol. I, p. 7-9.

**/ Colbert, Record on Appeal, Vol. II, p. 314-316 (The motion with the names of both appellants appears here, although for some reason a copy does not appear in the Oliver record. The Oliver trial transcript, Vol. I, p. 210 clearly reflects the filing.)

Both of these points are raised in a case presently pending before The Supreme Court of The United States, Maxwell v. Bishop, O.T. 1968, No. 622, reset as O.T. 1969, No. 13. We will therefore not argue these points further.

III

THE STATE AND FEDERAL CONSTITUTIONAL RIGHTS OF BOTH APPELLANTS WERE VIOLATED BY THE MANNER IN WHICH THE GRAND AND PETIT JURIES WERE SELECTED.

THIS POINT ARISES SPECIFICALLY FROM ASSIGNMENTS OF ERROR NOs. 2 b, 2e, 2 f, IN BOTH CASES IN THAT THE COURT BELOW ERRED IN REFUSING TO GRANT THE APPELLANTS MOTIONS TO QUASH THE INDICTMENT AND TO QUASH THE JURY VENIRE AND PANEL AND THE APPELLANTS PLEA IN ABATEMENT ON THE GROUNDS THAT NEGROES WERE SYSTEMATICALLY EXCLUDED FROM THE GRAND AND PETIT JURIES.*/

Since the State offered no evidence in rebuttal, the issue is solely whether the Appellants established a prima facie case that Negroes were systematically excluded because of race from the Leon County jury venire. For the convenience of the Court we set out below a table of figures from which we will argue this point. The 1960 census figures for Leon County were admitted into evidence as movants Exhibit No. 1 (Hearing, 4/15/69, p. 60). The figures from the census and the appropriate percentages were read into the record (Hearing, 4/15/69, pp. 59, 60). The Leon County jury lists for 1965 - 1969 were marked into evidence as movants Exhibits Nos. 2 through 7 (Hearing, 4/15/69, p. 65). The numbers of whites and Negroes on the jury lists for the years 1966 through 1969 were compiled by Wilma S. Sullivan, Supervisor of Elections and Custodian of Voter Registration Lists, and were read into the record (Hearing, 4/15/69, pp. 2 and 3).

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*/ The court below ruled that the evidence taken on this issue would apply to the cases of both appellants. (Hearing, 4/15/69, p. 2, p. 57).

TABLE OF FIGURES - LEON COUNTY CENSUS,

REGISTERED VOTERS, AND JURY LISTS.

	TOTAL	WHITE	NEGRO	NEGRO % OF TOTAL
Population	74,225	49,816	24,409	32.8%
21 yrs. & over	40,563	28,241	12,322	30.3%
Reg. Voters - 1966	32,357	25,166	7,191	22% Disparity (17%)
Jury List - 1966	2,004	1,903	101	5%
Reg. Voters - 1967	29,954	23,474	6,480	22% Disparity (14%)
Jury List - 1967	1,747	1,607	140	8%
Reg. Voters - 1968	33,260	26,416	6,844	21% Disparity (12%)
Jury List - 1968	2,310	2,103	207	9%
Reg. Voters - 1969	36,690	29,816	6,874	19% Disparity (12%)
Jury List - 1969	2,516	2,338	178	7%

The uncontradicted evidence drawn from the above Tables establishes that at the time of both trials Negroes constituted approximately 30.3% of the total population in Leon County 21 years and over. The evidence further establishes that at the time of both trials Negroes constituted approximately 19% of the registered voters in Leon County, this being the population eligible for jury service. The 1969 jury lists from which the juries for both trials were drawn had approximately 7% Negro representation on the lists. It is worth noting here that in the selection of juries for both cases the State exercised peremptory challenges to exclude all Negroes who were seated in the box at each trial. (O-TR. I, p. 194; C-TR. I, p. 101) The combination of these factors resulted in the all-white juries which convicted both Appellants.

The five County Commissioners of Leon County who are charged with the

duty of selecting prospective jurors and preparing the jury lists were called to testify by the Appellants. All of them as well as Mrs. Sullivan, the Supervisor of Elections and Custodian of the Voter Registration Lists, made the usual statements that they knew of no effort to systematically exclude Negroes. The Courts have long recognized that such statements do not have weight and cannot be considered a rebuttal of a movants prima facie case. E.G., Scott v. Walker, 358 F. 2nd. 561, (5th Cir. 1966); Reece v. Georgia, 350 U.S. 85 (1955); Norris v. Alabama, 294 U.S. 587 (1935); Shinall v. State, 187 So. 2nd 840 (1966). This principle has just been reaffirmed by The Supreme Court in Turner v. Fouche, ___ U.S. ___, No. 23 O.T. 1969, 38 LW 4090 (1-20-70).

The Table of Figures above clearly shows that in 1969 the disparity between the percentage of eligible Negro population in Leon County and the percentage of those placed on the jury lists was approximately 12% and that for the previous years the same disparity ranged between 12% and 17%. This we submit is a prima facie showing of purposeful discrimination on the part of the State, which the State has failed to rebut. It is well settled that the long continued absence or under-representation of Negroes on juries raises a prima facie case of discrimination. Whitus v. Georgia, 385 U.S. 545 (1967) (disparity of 17.8%); Scott v. Walker, supra, (disparity of 12%); Davis v. Davis, 361 F. 2nd 770 (5th Cir. 1966) (disparity ranging from 8.5% to 15%)

Such a showing places a burden on the State to prove that the absence or under-representation results from something other than purposeful discrimination. See, Patton v. Mississippi, 332 U.S. 463, 466, 468-9, (1947); Hill v. Texas, 316 U.S. 400, 405-6 (1942); Norris v. Alabama, 294 U.S. 587, 594-6 (1935); Turner v. Fouche, supra. The State has failed to discharge that burden in this case.

Moreover, even apart from the figures, the evidence is clear that the Commissioners made use of a scheme for systematic control of the racial composition of juries, or at the very least the opportunity for discrimination was present. Each of the Commissioners testified that he selected prospective jurors for the jury lists from the Voter Registration books and it was clear that these books reflected the race of all registered voters, although one or two of the Commissioners testified that they were not aware of this. The Court disposed of this point during the testimony of Commissioner Brown by saying: "...Let the record show (race) is indicated on the Voter List..." (Hearing, 2/4/69. p. 42) And of course the custodian of these records, Mrs. Sullivan, testified that the lists of registered voters have racial designations and that these are the same lists that are given to the jury Commissioners. (Hearing, 4/15/69, p. 66) She also testified that she gives the jury Commissioners "...all the information that we know about a voter;" (Hearing, 4/16/69, p. 4) This would of necessity include the race of each of the registered voters. It is also interesting to note that Commissioner Whiddon, when asked to describe exactly how he and the other Commissioners made their inquiry about names on the voter lists, testified: "I would address the Members of the Board and ask them if any of them knew, I would take this name there, Barbara Baker here, she's a secretary and the information that we have, she was born in 1945, she is a female, her race is white,..." He further testified that this was a very usual practice, done on numerous occasions. (Hearing, 2/4/10/69. p. 55)

One need go no further than Whitus v. Georgia, supra, for the rule that the above evidence requires quashing a jury venire resulting from such a system of "selection." See also Pullum v. Greene, 396 F 2nd 251 (5th Cir. 1968) That is, the opportunity for discrimination was present and this Court cannot say on

this record that it was not resorted to by the Commissioners. In Whitus, supra, the jury lists were derived from tax digests which contained a (c) at the names of Negroes. In turn the digests were derived from tax return sheets which were yellow for Negroes and white for whites. The jury Commissioners there, like the Commissioners in the instant case, all denied that they had either included or excluded anyone because of race and claimed that there were no racial designations on the lists. The Court there also discounted the fact that the Commissioners, like the Commissioners here, based part of their selection on personal acquaintance. Rather, personal knowledge has been frequently condemned by the Courts. E.G., Mitchell v. Johnson, 250 F. supp., 117 (M.D. Ala. 1966); Smith v. Texas, 311 U.S. 128 (1940); Cassell v. Texas, 339 U.S. 282 (1949).

The Courts have reached similar results each time evidence of racial designations on jury lists or on the source of jury lists has been presented. These racial designations support the proposition that the Commissioners had the opportunity for discrimination and since the result of their labors showed the gross disparities stated above, the Appellants clearly carried their burden of proving systematic exclusion of Negroes from the grand and petit juries.

The burden having been placed on the State and the State having failed to discharge that burden, the Court below erred in its rulings on these motions.

IV

THE TRIAL COURT ERRED IN THE CASE OF APPELLANT COLBERT IN REFUSING TO GRANT THE DEFENDANTS CHALLENGE FOR CAUSE TO PROSPECTIVE JUROR, MRS. MYRTICE POPPEL.

THIS POINT REFERS SPECIFICALLY TO ASSIGNMENT OF ERROR NO. 2.h.

A. Facts

Mrs. Myrtice Poppel was called as a prospective juror in the case of Appellant Colbert. On voir dire examination she disclosed that she knew the Crowe family, her children having gone to school with the Crowe children, that she specifically knew Travis Crowe III who was victim of the alleged arson-murder and that she knew Mr. Crowe, the father of the deceased, who would be an important witness for the State. (C-TR I, pp. 17, 18, 47,) It was also disclosed that she was a cousin of Donald Reeves, a Tallahassee Police Officer who would be a key witness for the State. (C-TR I, pp. 17, 48)

Mrs. Poppel was challenged for cause by the defense. The challenge was denied by the Court (C-TR I, p. 18) and the defense was later compelled to exercise one of its peremptory challenges to remove her from the jury box. (C-TR I, p. 56)

B. Argument

We submit that the Court below should have exercised its discretion to exclude this challenged juror for cause because of the constitutional requirement of an impartial jury and the gravity of this particular capital case. Most courts assert that the judge's discretion in this area is a discretion to excuse, rather than to retain, jurors and if error is to be committed, it should be error in favor of impartiality, rather than the taint of partiality.

The Declaration of Rights of the Florida Constitution provides that: "The right of trial by jury shall be secured to all, and remains inviolate for-ever." (25 F.S.A., 507) The Florida Statutes provide certain grounds for challenge to

an individual juror as follows:

> 1. He is not qualified as required by law.....
> 9. "That the juror is related by blood or marriage within the third degree to the defendant or the attorneys of either party or to the person alleged to be injured by the offense charged or on whose complaint the prosecution was instituted." (913.03, 23 F.S.A. 269)

The statutory ground for challenges to cause should be interpreted to include friendship with the deceased and his family, as well as friendship and/or relationship of third or fourth cousin with an important law officer who appeared as a witness for the prosecution. This would permit the defendants peremptory challenges to be used with more flexibility.

C. Law

The courts held that the defense right of challenge is the right to reject jurors who are biased, prejudiced or otherwise incompetent, rather than a right to select particular jurors. Blackwell v. State, 101 Fla. 1009, 132 So. 468 (1918); Melbourne v. State, 51 Fla. 73, 40 So. 189 (1906); Piccot v. State, 116 So. 2d 627 (1959).

The fact that the trial court exercises a very broad discretion in excusing prospective jurors, much more than in retaining jurors, Blackwell, supra., lends authority to the position that all possible doubt should be resolved in favor of the defendant. Courts have held that, "We must make sure that the lamentations of the unsuccessful litigant is [sic] without foundation, either in fact or circumstance, United States v. Chapman, 158 F. 2d 421, (10th Cir. 1946); that, "jurors should, if possible, be not only impartial, but beyond even the suspicion of partiality," O'Connor v. State, 9 Fla. 222 (1860); that, "in any sound judicial system it is essential not only that justice be done, but also that it appear to

State v. Jackson, 43 N.J. 148, 302 A 2d 1, 11 A.L.R. 3d 851-2 (1964), cert. den. 379 U.S. 982 (1965); and that, "in a criminal case, whenever after a full examination, the evidence given upon a challenge leaves a reasonable doubt of the impartiality of a juror, the defense should be given the benefit of the doubt." Holt v. People, 13 Mich., 224, 227 (1950).

We respectfull submit that fundamental fairness and broad policy issues, based upon a judge's discretion in excusing jurors and the gravity of the issues in a criminal, particularly in a capital, trial require the finding that the court below erred in failing to grant this challenge for cause.

V

THE COURT BELOW ERRED IN REFUSING TO GRANT THE APPELLANT'S MOTIONS TO SUPPRESS ADMISSIONS AND CONFESSIONS AND IN PERMITTING THE SAME TO BE RECEIVED IN EVIDENCE.

THIS POINT REFERS TO ASSIGNMENTS OF ERRORS NO'S 2. i. IN BOTH CASES.

A. Appellant Oliver

1. The Facts */

A motion to suppress any and all written and oral statements made by the Appellant to the police or other agents of The State of Florida on various State and Federal constitutional grounds was filed on December 30, 1968, (O-R pp. 10, 11), and a supplemental motion to suppress on additional grounds was filed on May 2, 1969, (C-R II, p. 320) **/

The motions were carried over and heard during the trial outside of the presence of the jury, (O-TR II, p. 152), and after the taking of testimony and hearing argument, the trial court denied the motions to suppress. (O-TR IV, p. 433)

a. Uncontroverted Facts

The Appellant, Billy Ray Oliver, was 15 years old at the time of the arrest and interrogation which resulted in the confessions in question. (O-TR III, p. 236) His Leon County school records were introduced into evidence as Defendant's Exhibit #1, (O-TR IV, p. 409), having been previously marked for identification during the suppression hearing. (O-TR III, p. 209) His 6th. grade teacher, Mrs. Perry, referring to the school records and to her personal experience with the Appellant, testified that he had been "retained" and spent two years in the 1st. grade (O-TR III, p. 213); that he was a "D" student or below average in the 6th.

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*/ We set out separately those facts which are uncontroverted and those where there is conflicting testimony.

**/ This latter motion was on behalf of both Appellants but appears only in the Colbert record for some reason.

grade (O-TR III, p. 214) even though he was older than most of that class (O-TR III, p. 231); that when he was in the 6th. grade he could only read at the 3rd. grade level (O-TR III, p. 216) and had language skills on a 4th. grade level (O-TR III, p. 216); that the only reason he was promoted from the 6th. to the 7th. grade was because he was over-age and they had no facilities to keep him in that school (O-TR III, p. 230); that he was "retained" and spent two years in the 7th. grade (O-TR III, pp. 215, 229) and that he dropped out of school completely while still in the 7th. grade (O-TR III, p. 237) and that he was consistently below normal on verbal skills' tests (O-TR III, pp. 218, 219) and substantially below the average in his class even though he was older. (O-TR III, p. 222)

Mrs. Perry also testified that she had administered the California Mental Maturity Test to him which was reflected on the school record with an Intelligence Quotient (I.Q.) score of 71. She characterized this I.Q. score of 71 as being almost in the moron class. (O-TR III, p. 218) Dr. Wallace Kennedy, Professor of Psychology and a Clinical Psychologist at Florida State University testified as an expert witness for the Appellant. (O-TR IV, p. 411) He testified that his specialty concerned intelligence tests and his research had been "mainly with intelligence and achievement." (O-TR IV, p. 412) He was familiar with the tests whose scores appeared on the Appellant's school records (O-TR IV, p. 414) and stated that an I.Q. of 71 was in the retarded range. He also stated that this was a language intelligence quotient which had to do with "fluency in the language, the ability to understand what is said to you and to be able to read and write and understand language." (O-TR IV, p. 422)*/

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*/ It is interesting to note that the only witness for the State who talked about the Appellant's intelligence was Joe Townsend, Special Agent of The Florida Bureau of Law Enforcement who testified that as to Oliver's mental ability, "I rated it low" (O-TR III, p. 378) and that in his opinion he was below average. (O-TR III, p. 380)

Oliver testified that he had been confined in the Leon County jail since May 17, 1968, on an unrelated trespass charge.*/ (O-TR III, p. 233) He was put into "solitary confinement" on that same day and kept there for 31 days until the preliminary hearing in this case on June 26, 1968. (O-TR III, p. 234) It was during this period of solitary confinement that he was interrogated by various police officers for varying lengths of time on May 21, 22, 23, 24, 25 and 28 and the first time he saw a lawyer or a judge was on June 26, 1968, (O-TR III, p. 270) and the first time he saw his parents was on May 27, 1968, (O-TR III, pp. 235, 236), after he had given an incriminating statement.

The Appellant testified that he was frightened during the entire period when the interrogations were taking place (O-TR III, pp. 252, 255, 256, 259/260, 269); that he never understood the "rights" they were telling him about and never knew he could see a lawyer before he was questioned (O-TR III, pp. 241, 242, 246, 249, 255, 260, 263, 268); that he did not know what the word "waiver" means (O-TR III, p. 271) and that the questioning by the officers always lasted a number of hours and was always in the night time usually after they awakened him from his sleep (O-TR III, pp. 239, 247, 252, 253, 259) except for the interrogation at the Courthouse on May 28. He was particularly frightened and upset when he was attached to "the machine" by Joe Townsend on May 23, 1968, from ten p.m. until ten minutes before midnight. (O-TR III, pp. 255, 256) It is significant that it was immediately after this interrogation by Townsend that the Appellant, beginning at 12:01 a.m. on May 24, gave the first statement in which he incriminated himself contrary to earlier statements, (Defendant's Exhibit "B")

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*/ This arrest had something to do with drinking from a "private" water fountain on public property and was the Appellant's only previous experience with the law. (O-TR II, p. 167)

The first time he was questioned he was first asked a series of questions about forged checks and then interrogated about the Crowe fire. (O-TR III, p. 239) This is corroborated by Deputy Chaires (O-TR III, pp. 311, 312) and denied by Deputy Campbell (O-TR IV, pp. 470, 471) the first of many contradictory statements by the State's witnesses. It was conceded by the State's witnesses, that in spite of his being detained on the trespass charge, they considered the Appellant "in custody" on the Crowe fire from May 22, 1968, or at the time all of the statements were/being obtained from the Appellant. (O-TR III, pp. 314, 315)

The police admitted they did not check into Appellant's background, school records or intelligence nor did they communicate with this 15 year old's parents until after May 28, 1968 when they had completed all interrogation. (O-TR III, pp. 352, 358; IV pp. 407, 408.)

b. Controverted Facts

The Appellant testified that Deputy Chaires offered him $3,000 "to tell him about some information." (O-TR III, p. 240) Chaires denied offering the Appellant any money but admitted there was a discussion about $3,000 and stated that Oliver asked him for the reward money after he admitted being involved in the Crowe fire. (O-TR III, pp. 317-319; O-TR IV, pp. 528, 529)

The Appellant testified that at the time he gave the last statement on May 28, 1968, Mr. Morrison promised him he was going to let him go home and make bond. (O-TR III, p. 267) Mr. Morrison never took the stand to deny this and Deputy Campbell and the Court reporter, Miss Thigpen, both admitted there was some discussion about bond on that day. (O-TR III, pp. 349, 286)

The Appellant testified that he was threatened with the electric chair if he did not "tell the truth" [confess] (O-TR III, p. 258) and Mr. Townsend could not say whether the electric chair "was or was not" discussed. (O-TR III, p. 391)

The Appellant also testified he was threatened, cursed, abused and otherwise mistreated by the police officers during the period of seven days of interrogation. (O-TR III, pp. 252, 257, 258, 260, 265, 276, 277)

C. The Series of "Confessions"

May 21, 1968: Oliver was questioned at night, in the county jail by Officers Chaires, Dawkins and Campbell first about forged checks and then about the Crowe fire. The questioning lasted for one or two hours and Oliver maintained his innocence throughout. (O-TR III, pp. 238-242)

May 22, 1968: Oliver after being awakened from sleep was questioned at night, in the county jail by Officers Chiares, Dawkins and Campbell about the Crowe fire. The questioning lasted about two hours and the transcribed statement, Defendant's Exhibit "A" , was taken in which Oliver denies any involvement with the Crowe fire himself but he incriminates others. (O-TR III, pp. 246-252)

May 23-24, 1968: Oliver was awakened from sleep and questioned at night while being attached to a machine by Officer Townsend. This lasted almost two hours, and after being told he was lying by Townsend, he incriminates himself for the first time. At one minute after midnight, Officers Chaires, Dawkins and Campbell begin interrogating him and the transcribed statement, Defendant's Exhibit "B", was taken in which Oliver incriminates himself. (O-TR III, pp. 253-260)

May 25, 1968: Oliver is interrogated by Officers Campbell and Chaires and the transcribed statement, State's Exhibit 12, was taken in which he continues to incriminate himself and the Officers attempt to clear

up some discrepancies in his earlier statements, that is, facts which Oliver states as part of his earlier confession which the Officers knew could not possibly be true.*/ (O-TR II, pp. 155-159, 166) The Appellant himself has no recollection of this statement. (O-TR III, p. 262)

May 28, 1968: Oliver was taken from the county jail to the Courthouse to be interrogated by Mr. Morrison. Oliver has just talked "through a hole with," but not seen his parents, the day before and repudiated all of his earlier statements and insisted he was not involved in the Crowe fire. (O-TR III, pp. 262-265, 364) This was transcribed and became Defendant's Exhibit "C". It is interesting to note that pursuant to an order of the Court below the prosecution furnished to counsel for the Defendant all of the statements except for this one. This statement of innocence was discovered by an independent investigation by counsel two days before the trial. (O-TR IV, pp. 621-622)

Oliver was then taken from the interrogation room by Officer Campbell and later returned. Campbell insisted it was only for five or ten minutes (O-TR III, p. 347) while the Court reporter who was present first testified that it an hour or an hour and a half (O-TR III, p. 284) and later testified it was at least a half hour. (O-TR IV, p. 623) At that point the final statement, State's Exhibit 16, was taken and this statement completely contradcits the earlier statement taken the same day.

In describing this "interlude" between the statement of innocence and the incriminating statement, Officer Campbell uses some interesting language. He testified that when he had Oliver alone he told him the

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*/ For example, in the May 24 statement, Oliver claims he talked with Mr. Crowe and some police officers at the scene of the fire.

State's Attorney "was a good man and he wasn't going to hurt him or do anything like that and he could trust him just like he trusted me, that I wasn't going to whip him or do anything." (O-TR III, pp. 359, 360) He then told Mr. Morrison "...That he [Oliver] was lying, he was scared and didn't trust him,..." (O-TR III, pp. 363, 364)

We submit that the continued interrogation and the taking of the series of statements from the Appellant, on their face, suggest improper police behavior. When you add to this the facts that the Appellant was a "retarded" fifteen year old with an I.Q. of 71, who was never before a judge during this period and never saw a lawyer or his parents, the behavior of the police outrageously offends one's sensibilities and sense of fair play.

B. Appellant Colbert

1. The Facts

A motion to suppress statements made by the Appellant to the police on various State and Federal constitutional grounds was filed on December 30, 1968 (C-R I, pp. 10, 11) and a supplemental motion to suppress was filed on May2, 1969. (C-R II, p. 320)

The motions were carried over and heard during the trial outside the presence of the jury, (C-TR I, p. 4; II, pp. 204, 243) and after the taking of testimony and hearing argument, the trial Court denied the motions to suppress. (C-TR III, pp. 351, 352)

a. Uncontroverted Facts

The Appellant, James Colbert, was 17 years old at the time of the arrest and interrogation which resulted in the admissions and confession in question and had only gone as far as the seventh grade in school. (C-TR III, p. 304) Other than a minor traffic case, this was his first experience with the law. (C-TR III, p. 314)

The mother of the Appellant , Mrs. Willie B. Colbert, testified that she and her husband had returned to their home about 10 p.m. on the night of May 23, 1968, and were told by one of their children that the police had been there looking for James (C-TR III, p. 299); that after she had gone to sleep that night the police came back looking for James and stated it was about a forged check and was not important (C-TR III, p. 300); that some time after 2 a.m. when James had come home and gone to sleep the police returned, told James they wanted him to get dressed and go with them; that they wanted to question him about some forged checks, that it was nothing serious and that

he would be back in the morning in time to go to work. (C-TR III, pp. 300-302) They never said anything to her about the Crowe fire.

The Appellant testified that he came home on May 24, 1968, about 2 a.m., was told by his parents of the police visit and the "forged checks" and that he then went to sleep. (C-TR III, pp. 305, 306) He stated that Deputies Chaires and Campbell woke him up a short while later, said they wanted him to go with them to answer some questions about checks, that they told him he would be back home in time to go to work that morning and that he got dressed and went with them. (C-TR III, pp. 306, 307) They never said anything to him about the Crowe fire. (C-TR II, pp. 307, 308)

This tricking of the Appellant and his parents by the police in telling them that they wanted to question the Appellant about forged checks and not the Crowe fire is corroborated by Deputy Chaires. (C-TR II, p. 284) Both Chaires and Campbell conceded that the Appellant was at that point "in custody" in connection with the Crowe fire. (C-TR III, 11. 258, 259, 285) Even though the police claimed they had information pointing to this Appellant two days earlier (C-TR III, p. 279) they had no warrant for his arrest when they took him into custody on May 24 (C-TR III, p. 280) and indeed, obtained a warrant only after they had interrogated him and obtained a statement. (C-TR III, p. 281)

The Appellant was taken to the county jail by Campbell and Chaires who "advised him of his rights" in connection with questioning him about forged checks while in their police car and still never said anything to the Appellant about the Crowe fire, (C-TR III, p. 287) Shortly after he was brought to the county jail, the Appellant was turned over to Officer Townsend who took him into another room, "read a little piece of paper to" him, connected him by rubber tubes

to a machine and then for the first time the Appellant was told that the questioning would not be about checks but about the Crowe fire. (C-TR III, pp. 311-314) It is conceded that the Appellant was then interrogated by Townsend from 3:10 a.m. until 7:56 a.m., or almost five hours. (C-TR II, p. 227) At some point during this period Colbert was taken into another room where he was confronted by the Appellant, Oliver, told by Deputy Chaires not to say anything himself and was then partially implicated in the Crowe fire by Oliver. (C-TR III, pp. 213, 320, 321) Colbert stated that he was crying and scared at this point (C-TR III, p. 320) and this was corroborated by Chaires. (C-TR III, pp. 291, 292) Sometime after 8:00 a.m. and after more than five hours of continuous interrogation the Appellant gave an oral admission to Townsend and the transcribed statement, State's Exhibits #13, #14 were taken. (C-TR III, p. 248)

The Appellant did not see a lawyer or a judge during all of the period referred to above and, in fact, the first time he saw a lawyer or judge was about a month after he was arrested. (C-TR III, p. 329) The Appellant testified that he was frightened, hungry and sleepy during the entire period of interrogation, (C-TR III, pp. 314, 315, 317, 318) that he did not understand what his "rights" were or that he could have a lawyer before answering any questions (C-TR III, pp. 308, 309, 312, 324) and that he does not know what the word "waiver" means. (C-TR III, p. 313)

Colbert testified that he believed that they had "tricked" him from his house with the story about forged checks. (C-TR III, p. 317)

b. Controverted Facts

The Appellant testified that there was no writing on the "waiver" form when he was told to sign it; (C-TR III, pp. 312, 313) that he was pushed

around, cursed and threatened including threats of being sent to the electric chair; (C-TR III, pp. 317, 318, 319, 320) that he was told others were pointing their fingers at him and that if he became a State's witness he could go home. (C-TR III, pp. 318, 322, 325) The police officers denied that he was threatened or abused in any way. (C-TR III, pp. 354, 355, 248)

It is clear that on the face of the uncontroverted facts there was an unlawful arrest, both in deceiving the Appellant and his family about the subject matter of the inquiry and in the police failing to obtain a warrant for Appellant's arrest even though they had probable cause to believe that he was implicated in the Crowe fire, and therefore everything that followed the unlawful arrest was tainted including the "confession" and admissions made by Appellant.

2. Law and Argument*/

It is respectfully submitted that all of the confessions, statements and admissions made in both cases should have been excluded by the trial court on the following grounds:**/

a. There was no proof of the corpus delecti, or the criminal element of arson-murder, prior to the offering and admitting of confessions and admissions. That is, there was no proof that the Crowe store was burned by the wilful act of some person criminally responsible for his acts before the incriminating statements of the Appellants were permitted in evidence. The Appellants' statements themselves may not be used to prove corpus delecti. Williams v. State, 100 Fla., 1054, 132 So. 186; Schneble v. State, Fla., 201 So. 2d 881 (1967)

b. The confessions and admissions by the Appellants were involuntary. That is, they were excludable based on the Due Process doctrine dating from Brown v. Mississippi, 297 U.S. 278 (1936) as well as by the additional federal standards which confessions must meet accumulated since Brown. See, Davis v. North Carolina 384 U.S. 737 (1966); Haynes v. Washington, 373 U.S. 503 (1963); Payne v. Arkansas, 356 U.S. 560 (1958); Watts v. Indiana, 338 U.S. 49 (1949); Haley v. Ohio, 332 U.S. 596 (1948); Gallegos v. Colorado, 370 U.S. 49 (1962).

c. The confessions and admissions were obtained from the Appellants in the absence of counsel in violation of the Sixth Amendment. Escobedo v. Illinois, 378 U.S. 478 (1964); Johnson v. New Jersey, 384 U.S. 719 (1966).

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*/ We believe that the following legal doctrines and case law apply equally well to the cases of both Appellants and we will therefore argue the law for both at the same time, pointing out of course, any substantial factual discrepancies between the two cases.

** / Each of these grounds was sufficient to justify exclusion by itself, and we argue that all of these grounds were present.

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d. The confessions and statements were obtained at a time that the Appellants were in custody "or otherwise deprived of their freedom of action in any significant way" in violation of the principles established in Miranda v. Arizona, 384 U.S. 436 (1966) in that there was no proof that each of the "Miranda" warnings as to their rights was expressly given to the Appellants and there was no proof that the Appellants knowingly and intelligently waived these rights.

e. The admissions made to the police informers*/ were, in addition to all other grounds, excludable under the rule of Massiah v. United States, 377 U.S 201 (1964) in that they were made after arraignment in the absence of counsel.

f. The statements were obtained from the Appellants following an unconstitutional arrest. Wong Sun v. United States, 371 U.S. 471 (1963); Traub v. Connecticut, 374 U.S. 493 (1963) (per curiam).

g. The statements were obtained from the Appellants during a period of illegal delay in taking them before a magistrate after arrest and while they were being illegally detained. Mallory v. United States, 354 U.S. 449 (1957).

h. That all subsequent statements were tainted by an earlier illegally obtained statement in that there was no intervening consultation with a lawyer. Killough v. United States, 315 F. 2d 241 (D.C. Cir. 1962); cf. Clewis v. Texas, 386 U.S. 707, 87 S. ct. 1338 (1967).

a. There was no proof of the corpus delecti prior to the offering and admitting of confessions and admissions.

We submit that prior to the Appellants own statement being received in

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*/ L.C. Schuler was an informer witness in both cases and Jess Davis was an informer witness only in the case of Appellant Oliver.

evidence there was no independent proof that there had been arson at the Crowe store.

The State proved that there was a fire and that Travis D. Crowe, III died as a result of that fire. The State then attempted to prove that there were other fires the same night as circumstantial evidence of arson at the Crowe store. The court below sustained an objection by the defense to this evidence. (O-TR II, p. 88) Then the State attempted the same thing with another witness, Mr. Campbell, and the court changed its ruling to permit this testimony over objection. (O-TR II, pp. 126, 127) The witness then, over continuing objection, testified about two other fires on the same night where there was some evidence of arson and one other fire with an undetermined cause. (O-TR II, pp. 145, 146) He also testified that there were a lot of people engaged in "disorders" on the night in question. (O-TR II, pp. 144, 145) Most important, there was never any evidence to connect either of the Appellants with any other fires, let alone the Crowe store, until their own statements were received in evidence.

There was no proof offered of arson at the Crowe store.*/ There was evidence however that there could have been a number of innocent ways in which the fire started; the kerosene tank on the premises, (O-TR II, pp. 149, 150) electric motors or fan belts on the premises which had previously given some trouble. (O-TR II, pp. 32, 33)

The most significant testimony on this issue was that of the one person who could qualify as an expert on arson, Captain James Cureton, the head of the

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*/ After the court had ruled on the confessions in the Oliver case, (O-TR IV, p. 433) the State recalled Officer Faircloth, who then testified about having seen a "bottle" in front of the Crowe store the night of the fire. (O-TR IV, p. 438) He admitted that although he had testified the previous day, at a preliminary hearing, a bail hearing and at deposition, he never mentioned the bottle before. (O-TR IV, pp.440-444) This testimony was substantially the same in the Colbert trial.

Fire Prevention Bureau of The Tallahassee Fire Department. (O-TR II, pp. 91, 106) He testified that he had conducted an examination at the Crowe store and had found no evidence of the use of inflammables, no evidence of arson, and no evidence that a window had been broken at the store before the fire. (O-TR II, pp. 107, 108; C-TR II, pp. 163, 164)

Therefore, in summary, the court below ruled, that evidence of other fires in other parts of Tallahassee on the night in question, when there were all sorts of disturbances throughout the city, with no independent proof that there was arson at the Crowe store, somehow constituted circumstantial evidence of arson at the Crowe store.

In an arson or arson-murder, the corpus delecti consists of the fact of death, the identity of the deceased and the burning resulting from the wilful act of some person criminally responsible for his acts. Williams v. State, 100 Fla. 1054, 132 So. 186; Smith v. State, 135 Fla. 835, 186 So. 203 (1939); Miles v. State, 36 So. 2d 182 (1948); Sims v. State, 184 So. 2d 217 (1966).

Before a confession may be received in evidence, there must be independent proof, either direct or circumstantial, of corpus delecti. Schneble v. State, 201 S. 2d 881 (1967)

If based upon circumstantial evidence, the proof must be established, beyond reasonable doubt and by convincing proof. Hulst v. State, 123 Fla. 315, 166 So. 826. It must be convincing, satisfactory and unequivocal. Lee v. State 96 Fla. 59, 117 So. 699 (1928). The proof here did not meet these tests.

b. The confessions and admissions by the Appellants were involuntary.

> "Under our system society carries the burden of proving its charge against the accused not out of his own mouth. It must establish its case, not by interrogation of the accused even under judicial safeguards, but by evidence independently secured through skillful investigation. . .
>
> The requirement of specific charges, their proof beyond a reasonable doubt, the protection of the accused from confessions extorted through whatever form of police pressures, the right to a prompt hearing before a magistrate, the right to assistance of counsel, to be supplied by government when circumstances make it necessary, the duty to advise an accused of his constitutional rights -- these are all characteristics of the accusatorial system and manifestations of its demands. . .
>
> Law triumphs when the natural impulses aroused by a shocking crime yield to the safeguards which our civilization has evolved for an administration of criminal justice at once rational and effective." (emphasis added)
>
> Watts v. Indiana, 338 U.S. 49, 54, 55 (1949)

It is submitted that the prosecution in the instant trials established its case solely by improper interrogation of the Appellants. Not only did they not obtain independent evidence "through skillful investigation" but they produced the untrustworthy and incredible testimony of two informers, both having been previously convicted of four felonies, and both then in the care and custody of the prosecution in the Leon County Jail. (See the testimony of L.C. Schuler and Jess Davis at O-TR V, pp. 760-821, O-TR VI, pp. 855-876, and L.C. Schuler at C-TR IV, pp. 409-424).

The Supreme Court cases in which convictions have been set aside because they were based on confessions obtained in violation of the Due Process clause of the Fourteenth Amendment and the totality of circumstances in which the confession was obtained rendered it involuntary are of course legion*/ and we will

*/ Brown v. Mississippi, 297 U.S. 278 (1936) and its progeny; see also The Coerced Confession Cases in Search of a Rationale, 31 U. of Chi. L. Rev. 313 (1964).

only refer to those cases where the facts are fairly analagous to the cases at bar.

Almost exactly in point is Haley v. Ohio, 332 U.S. 596 (1947), where the defendant was a fifteen year old Negro youth, who had been questioned for five hours while being held incommunicado. The Supreme Court in reversing the conviction said:

> "But we are told that this boy was advised of his constitutional rights before he signed the confession and that, knowing them, he nevertheless confessed. That assumes, however, that a boy of fifteen, without aid of counsel, would have a full appreciation of that advice and that on the facts of this record he had a freedom of choice. We cannot indulge those assumptions. Moreover, we cannot give any weight to recitals which merely formalize constitutional requirements. Formulas of respect for constitutional safeguards cannot prevail over the facts of life which contradict them."
> 332 U.S. at page 601

and:

> "What transpired would make us pause for careful inquiry if a mature man were involved. And when, as here, a mere child -- an easy victim of the law -- is before us, special care in scrutinizing the record must be used. Age 15 is a tender and difficult age for a boy of any race. He cannot be judged by the more exacting standards of maturity. That which would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens."
> 332 U.S. at page 599

Colbert, who was seized by the police in the dead of night under false pretenses, was then questioned for more than five hours, confronted by Oliver who incriminated him -- much as Haley was shown alleged confessions of other boys involved -- and then becoming the victim of fear and panic, "confessed." Oliver, fifteen years old with an I.Q. of 71, was held incommunicado and questioned for a number of days before he became a "ready victim of the inquisition." Haley, supra, at p. 599.

Again, the Supreme Court in reversing a conviction in a case with similar facts, said:

> "There is no guide to the decision of cases such as this, except the totality of circumstances that bear on the two factors we have mentioned. The youth of the petitioner, the long detention, the failure to send for his parents, the failure immediately to bring him before the judge of the Juvenile Court, the failure to see to it that he had the advice of a lawyer or a friend -- all combine to make us conclude that the formal confession on which this conviction may have rested (see Payne v Arkansas, 356 U.S. 560, 568, 78 S. Ct. 844, 2 L.Ed. 2d 975) was obtained in violation of due process."
> Gallegos v. State of Colorado, 370 U.S. 49, 55 (1962)

We submit that all of the elements referred to above by the Court in Gallegos were present in the instant cases.

In Payne v. Arkansas, 356 U.S. 560 (1957) the Court reversed the conviction of a mentally dull nineteen year old Negro with a fifth grade education who had been arrested without a warrant, was denied a hearing before a magistrate, was held incommunicado for three days without counsel, advisor or friend and had been subjected to a lie detector test. This last element was present in the custodial interrogation of both Colbert and Oliver, and with the exception of the threat of mob violence suggested in Payne, these elements, we submit, were more severe in the present cases in view of the total circumstances.

Significant factors present in the Appellants cases have been spoken on by the Supreme Court in holding confessions involuntary and voiding convictions in many cases: An adult, married Negro, with a fifth grade education, subjected to a series of interrogations including polygraph tests. Clewis v. Texas, supra; no claim of physical abuse or long questioning, but no prior experience with the police. Haynes v. Washington, supra; The defendant being held incommunicado, unable to receive support from family or friends. Haley v. Ohio, supra. Watts v. Indiana, supra, Turner v. Pennsylvania, 338 U.S. 62 (1949), Ward v. Texas, 316

U.S. 547, Davis v. California, supra; The defendant was without the aid of counsel, Davis v. California, supra, Haley v. Ohio, supra, Payne v. Arkansas, supra, Ashcroft v. Tennessee, 322 U.S. 143 (1944); defendant claims threats and abuse, and the Court does not rely on the ability to prove threats because of the nature of the nature of the process. Haley v. Ohio, supra, Ashcroft v. Tennessee, supra; The defendant is questioned fairly often; Turner v. Pennsylvania, supra.

We submit that the totality of circumstances present in the case of each Appellant prove beyond a doubt that the callous police behavior was inconsistent with "fundamental principles of liberty and justice which lie at the base of all our civil and political institutions," Brown v. Mississippi, supra, at p. 286, and these confessions were coerced and "did not constitute an 'expression of free choice,' and that their use before the jury,. . . , deprived him (Appellants) of 'that fundamental fairness essential to the very concept of justice,' and hence denied him due process of law, guaranteed by the Fourteenth Amendment." (footnotes omitted) Payne v. Arkansas, supra, at page 567.

c. The confessions and admissions were obtained from the Appellant in the absence of counsel. Since we have already covered this issue in part in paragraph b., supra and will touch on it in paragraph d., infra, we only mention here that in view of all the circumstances previously discussed this was a particularly outrageous violation of the Sixth Amendment, in that counsel was first provided to the Appellants after all the interrogation was completed, and not until a month thereafter, at the time of the preliminary hearing. Escobedo v. Illinois, supra; Miranda v. Arizona, supra.

d. The confessions and statements were obtained in violation of the principles established in Miranda v. Arizona, supra.

It is clear that each of the Appellants was in custody in connection with the Crowe fire prior to the interrogation and the taking of any statements. The following principles have now been clearly established by Miranda.

> "They exclude any confession obtained following police questioning of a defendant who is in custody "or otherwise deprived of his freedom of action in any significant way," id. at 444,unless (1) prior to the confession, the police have informed him that (a) he has the right to remain silent; (b) any statement he makes can be used as evidence against him; (c) he has the right "to consult with a lawyer and to have the lawyer with him during interrogation," id. at 471; and (d) if he is indigent, he has a right to have an appointed lawyer. Each of these warnings must be expressly given, and a confession made in police custody is inadmissable unless a foundation is laid for it by affirmative showing in the trial record that the four warnings were given. Proof by the prosecution that the defendant knew of any of these rights will not excuse a failure to warn. In addition to showing that the defendant was warned of these rights, the prosecution must show (2) that the defendant waived the rights. (a) "If the interrogation continues without the presence of an attorney, and a statement is taken, a heavy burden rests on the government to demonstrate the the defendant knowingly and intelligently waived his privilege against self-incrimination and his right to retained or appointed counsel." Id. at 475. (b) Waiver will not be presumed from the simple fact that the defendant goes ahead and makes a statement after the warnings. (c) "Whatever the testimony of the authorities as to waiver of rights by an accused," the fact that the accused's statement was made after "lengthy interrogation or incommunicado incarceration...is inconsistent with any notion of voluntary relinquishment of the privilege." Id. at 476.

The Miranda requirements apply to all trials commencing after June 13, 1966. Johnson v New Jersey, 384 U.S. 719, 734 (1966).

We submit that on the face of the several statements the police failed to properly warn the Appellants:

Oliver

Defendant's Exhibit "A", May 22, 1968 -- no warning that anything he says might be used against him, no advice that he could stop answering questions at any time, no advice that he could have an attorney furnished to him prior to or at the interrogation, no waiver of the right to an attorney.

Defendant's Exhibit "B", May 24, 1968 -- no warning that anything he says might be used against him, no advice that the State would furnish him an attorney prior to or at the interrogation, no waiver of the right to an attorney.

State's Exhibit 12, May 25, 1968 -- no advice that the State would furnish him an attorney prior to or at the interrogation, no advice that he could stop at any time, no waiver of the right to an attorney.

Defendant's Exhibit "C", May 28, 1968 -- no warning that anything he says might be used against him, no advice that he could stop at any time, no waiver of the right to an attorney.

State's Exhibit 16, May 28, 1968 -- no warning that anything he says might be used against him, no waiver of the right to an attorney.

Colbert

State's Exhibit 13, May 24, 1968 -- no advice that the State would provide him with a lawyer prior to or at the interrogation, no advice that he could stop at any time, no waiver of the right to an attorney.

The mandate of Miranda has, of course, been followed by the Florida courts and they have placed a strict burden on the prosecution to show compliance with Miranda. Woods v. State, 211 So. 2d 248 (1968); Abram v. State, 216 So. 2d 498 (1968).

The State of course will argue that all of the foregoing defects as to his statements were cured by the "Waiver of Rights" signed by the Appellant Oliver, State's Exhibit #13, and as to both Appellants by the testimony of the police officers that they gave more complete warnings when they were talking with Appellants than when they actually took the statements. Neither of these arguments should be credited by this Court.

It is clear that the prosecution bears the burden of proof of showing a waiver of rights by the Appellants. As the court said in Miranda:

> "Whatever the testimony of the authorities as to waiver of rights by an accused, the fact of lengthy interrogation or incommunicado incarceration before a statement is made is strong evidence that the accused did not validly waive his rights." 384 U.S. at page 476

A waiver must be "...an intentional relinquishment or abandonment of a known right or privilege." Johnson v. Zerbst, 304 U.S. 458, 464, (1938). In view of the age, education and intelligence of the Appellants, and the totality of circumstances previously discussed, it is inconceivable that there was a knowing abandonment or waiver of the right to counsel, or any other right in this case.

Both Appellants testified that they did not know what their rights were and did not know what the word "waiver" means. Indeed, the experienced police officers, Campbell and Chaires, were never able at the trial to accurately relate the Miranda warning. Campbell testified that he did it from memory and did not use a "card." (O-TR II, p. 176) The results of his faulty memory are clear on the face of the transcribed statements. Chaires, with eight years of experience as a police officer, could not give the complete Miranda warning when asked, (O-TR III, p. 398) could not remember a part of the warning that was read to him a few minutes earlier, (O-TR IV, p. 545) although he swore he could

remember the warning given Oliver a year earlier, and most significantly, when counsel read to him the exact warning that was given to Colbert, Chaires could not explain properly its meaning. (C-TR. III, pp. 296, 297)

If experienced police officers could not adaquately explain these rights merely because they werein court under the pressure of cross-examination, an environment they were familiar with, how could there be understanding and intelligent waivers by very young, scared, isolated Negro boys with limited education and intelligence in the hostile environment of the jailhouse, and no prior experience with the law. Such an assertion by the State taxes one's credulity and is contrary to the law. See, Gallegos v. Colorado, supra; Haley v. Ohio, supra; cf., Mankus v. State, 161 So. 2d 547 (Fla. 1964).

As to grounds e, f, g, and h, we believe they are clear and self-explanatory and are adequately covered by the statement of facts in this section and the law cited with each ground. We therefore do not present further argument here.

VI

THE COURT BELOW ERRED IN THE CASE OF APPELLANT OLIVER IN REFUSING TO GRANT DEFENDANT'S MOTION FOR A MISTRIAL WHEN IT DEVELOPED DURING THE TRIAL THAT THE PROSECUTION HAD VIOLATED A PRE-TRIAL ORDER BY FURNISHING THE DEFENSE WITH ONLY A PART OF A STATEMENT TAKEN FROM THE APPELLANT. THE COURT ERRED FURTHER IN FAILING TO STRIKE THIS INCOMPLETE STATEMENT FROM THE RECORD AND THEN PERMITTING THE PROSECUTION TO PLAY THE TAPE RECORDING OF THIS STATEMENT TO THE JURY AFTER HAVING ALLOWED THE PROSECUTION TO PUBLISH A WRITTEN TRANSCRIPT OF THE TAPE TO THE JURY.

THIS POINT ARISES UNDER ASSIGNMENT OF ERROR NO. 2. k. IN THE CASE OF APPELLANT OLIVER.

After the court below ruled that statements taken from the Appellant Oliver were admissable, the prosecution published one of these statements, State's Exhibit #12, to the jury. (O-TR IV, p. 550) When the witness, Officer Campbell, was nearing the conclusion of the statement it became evident that the original statement of the Appellant contained more pages than the copy furnished to the defense pursuant to an order directing the production of all statements in the possession of the prosecution. (O-TR IV, p. 574) The defendant moved that the entire statement be excluded and then moved for a mistrial and both motions were denied. (O-TR IV, p. 580) The State then later produced the original tape recording from which the transcribed statement had been made, and over objection by the defense, it was received in evidence as State's Exhibit #15 and the prosecution was permitted to play this recording to the jury. (O-TR V, pp. 630, 633, 634, 635)

We submit that the trial court erred in merely denying the prosecution the right to place the missing pages before the jury and in not striking the entire statement.

Under Rule 1, 220, Discovery, Florida Rules of Criminal Procedure, Vol. 33, F.S.A., the defense has a right to a copy of any statements made by the defendant. Once the prosecution has offered part of a confession into evidence, the defense has a right to put the remainder of the confession into evidence, even if it is

prejudicial. Louette v. State, 152 Fla. 495, 12 So. 2d 168 (1943); Thalheim v. State, 38 Fla. 169, 20 So. 938 (1896). If the prosecution fails to give the defense the entire confession, the defense is unable to intelligently exercise its right and moreover, as in the instant case, the defense has to object in the presence of the jury, to them hearing the missing pages. This of course, is extremely harmful to the defendant. In order to avoid the "Hobson's choice" with which the defendant was faced, the court should have excluded the entire statement.

To compound this harmful error, the court then permitted the tape recording to be played with the clerk instructed to stop the tape at the point where the missing material commenced. (O-TR V, pp. 634, 638) Thus you not only have the undue repetition and improper emphasis that the courts have frowned upon, but you again have the spectacle of the jury being deprived of some information at the request of the defendant.

This very Court has recently spoken on the issue of undue repetition and emphasis when it held it was error for the jury to have written transcripts as well as tape recordings. Duggan v. State, 189 So. 2d 890 (Fla. D.C. App., 1st Dist. 1966).

We submit that the combination of circumstances surrounding this statement the missing pages and the taped repetition of the statement resulted in extreme prejudice to the Appellant.

VII

THE COURT BELOW COMMITTED REVERSIBLE ERROR BY PERMITTING THE STATE TO IMPEACH THE WITNESS, MARTHA PETERSON, WITH A PRIOR INCONSISTENT STATEMENT AT A TIME WHEN THE WITNESS HAD GIVEN NO TESTIMONY ADVERSE TO THE INTEREST OF THE STATE.

THIS POINT REFERS SPECIFICALLY TO ASSIGNMENT OF ERROR NO. 2. n. IN THE CASE OF APPELLANT, COLBERT.

During the State's case, they called Martha Peterson, and asked that she be called as the Court's witness. (C-TR IV, pp. 424, 425) This was permitted by the Court over objection. (C-TR IV, p. 425) After a series of questions during which the witness gave no testimony adverse to the State's interest (C-TR IV, pp. 425-427) the State attempted to impeach her with a prior statement and the Court below ruled over objection that the State could so procede. (C-TR IV, pp. 427-429)

The State had previously attempted to do the same thing in the Oliver trial two months earlier with the same witness and another witness and the Court there granted the defendants objection to impeaching this witness, with a prior inconsistent statement before she testified adversely to the State's interest. (O-TR V, pp. 718-723, 728, 731, 740, 742,753, 755, 759) In the Oliver trial Judge Taylor again and again refused to permit the State to do this and on a number of occasions stated it would be reversible error for him to permit it, (O-TR V, p. 722), and that if the State attempted to do this, he would have to declare a mistrial. (O-TR V, p. 731)

The utter disregard by the prosecution for the fundamental concepts of fairness which we submit runs throughout the conduct of these two trials is illustrated by the following exchange in the Colbert trial after the repeated rulings by Judge Taylor on this point in the Oliver trial:

(The following prodeedings were held at the bench and out of hearing of the Jury:)

"MR. BRONSTEIN: I believe Mr. Hopkins is going to attempt to impeach this witness with a prior inconsistent statement. This has been gone into and Judge Taylor ruled he could not do that.

MR. HOPKINS: I don't agree with that. Judge Taylor did let me question the sister.

MR. BRONSTEIN: Not about that prior statement.

MR. HOPKINS: If you say he so ruled, I want to get the record." (C-TR IV, p. 428)

There was clearly no surprise or entrapment involved for the State since the record of both trials indicate that they knew what the testimony of this witness would be months before she was called to testify in the Colbert trial. (O-TR V, p. 733)

The Florida statutes provide that a party producing a witness can only, "...in case the witness prove adverse, contradict him by other evidence, or prove that he has made at other times a statement inconsistent with his present testimony;" F.S.A. 90.09.

The leading cases interpreting the above are Adams v. State, 34 Fla. 185, 15 So. 905 and Hernandez v. State, 22 So. 2d 781, en banc (Fla. 1945). Adams quoted in Hernandez, sets out the clear rule about when a party may impeach a witness he produces with a prior statement as follows:

> "He must not only fail to give the beneficial evidence expected of him, but he must become adverse by giving evidence that is prejudicial to the cause of the party producing him." Hernandez v. State, supra., at p. 786.

The State may well argue that the above rule should not apply since, at their request, the witness was called as the Court's witness. This clearly cannot defeat the intent of the statute in view of the history of this matter in the

earlier Oliver trial. This would clearly be an attempt to evade the statute. Indeed, not only do the exceptions to the rule of surprise and entrapment not exist in the instant case, but the opposite is true. The State attempted successfully to bring to the attention of the jury extremely prejudicial testimony which they knew was improper to present to the jury in this manner.

The State in fact did what was recently condemned by the Fourth District Court of Appeals citing Hernandez when they said:

> "A party will not be permitted to put a witness on the stand knowing that his testimony will be adverse and then claim surprise in order to impeach such witness. This is particularly true when the procedure is nothing more than a device or artifice to get into evidence before the jury that which would otherwise be inadmissable." (Emphasis added)
> Foremost Dairies, Inc. v. Cutler, Fla., 212 So. 2d 37, 40 (1968)

In the instant case, after the witness testified she knew nothing about the Crowe fire and that she had not talked with the Appellant or others about it, the prosecution began to read from a prior statement, asking the witness whether she had been asked certain questions and given certain answers. (C-TR IV, pp. 427, 432-437) They were highly prejudicial in that they related to alleged incriminating admissions by the Appellant and others.

In a recent case precisely in point, Rankin v. State, Fla., 143 So 2d 193 (1962) the Supreme Court of Florida held this practice to be reversible error. In Rankin, the State asked that the Court call a person as its witness because of contradictory statements. The witness then declared ignorance of the crime and the State Attorney then proceded to read off some of the questions and answers from a prior statement. The judge undertook to remove any prejudicial error by charging the jury that the questions and answers were not to be considered as evidence but only related to the credibility of the witness. In spite of that

protection, which the Appellant Colbert was not afforded, the Supreme Court said they could not sanction this procedure since the jury did get a description of the crime by the reading of the prior statement and held it was prejudicial error.

VIII

THE COURT ERRED IN PERMITTING RONNY HAYES TO TESTIFY FOR THE STATE WHEN HE HAD BEEN SITTING IN THE COURTROOM AFTER ALL THE WITNESSES HAD BEEN SEQUESTERED.

THIS POINT IS UNDER ASSIGNMENT OF ERROR NO. 2. m. IN THE CASE OF APPELLANT, COLBERT.

All of the witnesses in the trial of Appellant, Colbert, were ordered sequestered by the Court before the taking of any testimony. (C-TR I, p. 104) During the voir dire examination, when counsel for the Appellant was questioning a prospective juror about his relationship with Ronny Hayes, an investigator for the State's Attorney's office, the following colloquy took place:

> "MR. HOPKINS: Court please, Mr. Hayes is not a witness. We're talking about a moot question here, I think.
>
> MR. BRONSTEIN: I don't know that he's not. He may very well be a witness.
>
> MR. HOPKINS: Are you going to use him as a witness?
>
> MR. BRONSTEIN: I can't say that now.
>
> MR. HOPKINS: We think it's a moot question unless he's talking about a witness listed, your Honor.
>
> THE COURT: The State has indicated it's not going to call Mr. Hayes as a witness, so I think that is a moot question, Mr. Bronstein. He will not be allowed to call him as a witness after announcing such." (C-TR I, pp. 44, 45)

During the trial Mr. Hayes was in and out of the courtroom assisting the prosecution and was sitting in the courtroom during the testimony of Martha Peterson, the witness called by the Court at the request of the State. (See Section VII, supra.) During her testimony she accused Mr. Hayes of having coerced her into making a prior untrue statement of an incriminating nature about the Appellant. At that point the following colloquy took place:

> "MR. HOPKINS: Court please, maybe we had better ask that Mr. Hayes leave the room. I didn't know this witness was going to accuse him of trying to tell her what to say.

MR. BRONSTEIN: Court please, Mr. Hopkins knew that Mr. Hayes was involved in this.

MR. HOPKINS: Yes, sir, but I didn't know that this witness was going to accuse him of trying to tell her what to say.

THE COURT: Just a minute. Mr. Hayes, you had better leave the room." (C-TR IV, pp. 440-441)

Thereafter, when the Peterson witness had concluded her testimony the following colloquy took place:

"MR. HOPKINS: Like to call Mr. Hayes as a witness, if I might.

MR. BRONSTEIN: Your Honor, please, I object to Mr. Hayes testifying. The rule has been invoked, the witnesses sequestered, and Mr. Hayes was sitting here during a lot of the trial and was sitting here during some part of the testimony of the last witness.

THE COURT: Mr. Hayes will be called as my witness.

MR. BRONSTEIN: May I add one thing, Judge?

THE COURT: Yes, sir.

MR. BRONSTEIN: I also want to point out that if there is any question of surprise that influences your Honor in permitting Mr. Hayes to testify that there had been --

MR. HOPKINS: Just a minute. Are you going to testify in front of the Jury?

MR. BRONSTEIN: All right, let's go up."

(The following proceedings were held at the bench and out of hearing of the Jury:)

"MR. BRONSTEIN: I wanted to point out to your Honor that previous to this trial commencing and in some pre-trial matters, this question of the statement of this witness, the Peterson girl, and the question of whether Mr. Hayes threatened her was brought to the attention of the Court and counsel, Mr. Hopkins and Mr. Morrison, and statements were exchanged at that time, and Judge Taylor made some inquiry into the matter without any findings on it, so that my point is that Mr. Hopkins

and Mr. Morrison knew that this witness, if called and if confronted with that statement under Your Honor's ruling, would say that Mr. Hayes threatened her.

THE COURT: I'm calling him as my witness."
(C-TR IV, pp. 445-447)

Mr. Hayes was then permitted to testify and since he was the last witness to be heard by the jury and because his testimony gave undue weight to the damaging aspects of the previous witness, Martha Peterson, this was particularly harmful to the Appellant.

Although the general rule is that the trial judge enjoys discretion in deciding, after sequestration, whether an eavesdropping witness may testify it has been held many times that it is an abuse of that discretion where proper objection is made, there is resulting harm to the defendants case and there was no excuse for the failure to sequester.

We submit that not only are all of the above elements present in this case, but that there was a particular unfair abuse of discretion by the court in view of the position taken by the prosecution during the voir dire examination. (see colloquy, supra)

In Holder v. State, 187 So. 781 (Fla. 1939) it was held to be an abuse of discretion for the trial judge to permit an eavesdropping witness to testify where it was a distinct advantage to the State to let the witness hear other witnesses and where "no excuse whatever for excepting him appears in the record." See also, Young v. State 99 So. 2d 304 (D.C. 3rd Fla., 1957) relying on Holder, supra.

In a very recent case, analogous to the instant case, a detective, not scheduled to testify, was sitting in the courtroom when he heard the defendant say he had never orally confessed. The detective was then permitted to testify that

the defendant had confessed and the Appellate Court reversed the conviction and granted a new trial. Jackson v. State, 177 So.2d 353 (D.C. 3rd, Fla., 1965)

We respectfully submit that in view of the facts and the unfair behavior of the prosecution in this case, the Court below erred and abused its discretion in permitting Hayes to testify.

THE COURT BELOW ERRED IN REFUSING TO GRANT THE VARIOUS APPELLANTS MOTIONS FOR A MISTRIAL AND IN REFUSING TO SUSTAIN VARIOUS APPELLANTS OBJECTIONS DURING THE COURSE OF THE TRIALS.

THIS POINT REFERS TO ASSIGNMENTS OF ERRORS NOs. 2. k. AND 2. m. IN BOTH CASES.

A. Appellant Oliver

We submit that the trial court erred in the following instances:

1. In permitting, over objection, Officer Campbell to testify as to other fires in Tallahassee on the night in question. (O-TR II, pp. 126-128) See also, Section V, 2., a., supra.

2. In permitting the witness, over objection, to continue to use the terms "firebomb" or "Molotov Cocktail." (O-TR II, pp. 130, 131)

3. In permitting the state, over objection, to recall Officer Faircloth to testify on the issue of corpus delecti after the Court had ruled on the confessions, (O-TR IV, p. 433, 434) and in this connection denying a motion for a mistrial when this witness added highly prejudicial facts to his previous testimony. (O-TR IV, pp. 439, 440)

4. In denying a motion for a mistrial when the prosecution used the word "confession" in the presence of the jury before any confessions had been offered and received in evidence. (O-TR IV, pp. 474, 475)

5. In ruling, over objection, that Appellant Colberts name need not be stricken from the Oliver Statements being received in evidence. (O-TR IV, pp. 547-549)

6. In denying a motion for a mistrial, when the words "This is a recorded statement of Billy Ray Oliver, . . . which statement is in reference to the Arson-Murder of Travis Earl Crow, III. . . " (emphasis added) was played on a tape recorder

for the jury. (O-TR V, pp. 636, 637)

7. In permitting the witness L. C. Schuler, over objection, to testify as to admissions made by the Appellant without prior proof of corpus delecti (O-TR V, p. 762) See also Section V, 2., a., supra.

8. In denying a motion for a mistrial, after a witness referred to Appellant Colbert as a "defendant" in the Oliver trial after very prejudicial testimony about having smelled gasoline on Colbert on the night in question. (O-TR V, pp. 838, 839)

9. In permitting, over objection on the grounds of surprise, the witness Jess Davis to be called by the State (O-TR V, pp. 848-850, 860)

10. In denying a motion for a mistrial, when the prosecution used the words "this murder" in front of the jury in questioning a witness (O-TR V, pp. 892)

B. Appellant Colbert

We submit that the trial court erred in the following instances:

1. In denying a motion for a mistrial when the prosecution asked a witness a highly prejudicial question about a "hole in the window" of the Crow store in the presence of the jury. (C-TR II, pp. 68, 69)

2. In permitting, over objection, Officer Faircloth to testify as to other fires that night in Tallahassee. (C-TR II, pp. 108-111, 121-123) See also, Section V, 2., a., supra.

3. In permitting, over objection, the witness Faircloth to continually refer in his testimony to "Firebombs" and "Molotov Cocktails" and in denying a motion for a mistrial on those grounds. (C-TR II, pp. 123-126, 129)

4. In permitting, over objection, Officer Townsend to testify as to admissions made by the Appellant in connection with his conducting a polygraph examination. (C-TR III, pp. 214-217, 352)

5. In permitting the witness, L. C. Schuler, over objection, to testify as to admissions made by the Appellant without prior proof of corpus delecti. (C-TR IV, p. 410) See also, Section V, 2., a., supra.

6. In denying a motion for a mistrial when the prosecution in questioning a Negro witness made the following references to one of the attorneys for the Appellant, also a Negro:

> Q. Did Mr. Marshall make this statement to you: "We colored folks have got to stick together"?
>
> MR. BRONSTEIN: Court please, I object to that question.
>
> THE COURT: Objection overruled.
>
> A. No, sir.
>
> THE COURT: All right.
>
> MR. HOPKINS: Court please, I don't want to be contrary to the Court's ruling. Did you rule on that?
>
> THE COURT: Yes, and she said he did not make the statement. She's answered it.
>
> Q. All right, state whether or not Mr. Marshall told you that colored folks wouldn't look good on you if you kept to the statement you had given Mr. Morrison?
>
> A. No, sir.
>
> MR. BRONSTEIN: Court please, I respectfully move for a mistrial.
>
> THE COURT: She denied it. She said no. Motion denied. (Emphasis added) (C-TR IV, pp. 431, 432)

This, of course, is in the context of a white victim, a Negro defendant and an all-white jury.

X

THE COURT BELOW ERRED IN REFUSING TO GRANT THE APPELLANTS REQUESTS FOR JURY INSTRUCTIONS

THIS POINT REFERS TO ASSIGNMENTS OF ERROR NO. 3. IN EACH CASE

The appellants filed written requests for jury instructions with the court below. (O-R, pp. 94-100); (C-R II, pp. 419-431) In the Oliver case there were 74 requests and in the Colbert case there were 70 requests. In both cases, the court below denied all requests, except as they were included in the general charge. In both cases most of the requests were not included in the general charge, or were included with substantial differences in language or emphasis. (O-R, pp. 101-115); (C-R II, pp. 399-412)

We believe that the refused requests constitute fundamental error apparent in the record-on-appeal, and we will not present further argument.

CONCLUSION

We believe that the foregoing clearly illustrates that the verdict in each case was contrary to law and to the weight of evidence. There was no evidence of a crime or of the guilt of either Appellant without evidence illegally obtained and improperly placed before the jury. The court below, in each case, committed serious, harmful and prejudicial error as we have shown.

This Court should reverse the judgments below, dismiss the indictments and order the Appellants discharged.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Appellants brief was served upon the Honorable William Hopkins, States Attorney's office, Leon County Courthouse, Tallahassee, Florida, by prepaid postage, first class airmail, this 27th day of February, 1970.

Alvin J. Bronstein

ALVIN J. BRONSTEIN

Tallahassee Democrat

APRIL 17, 1969

2 Juries Will Be Selected

For Defendants In Crow Trial

By BRIAN HOWLAND
Democrat Staff Writer

Two juries, one to try Billy Ray Oliver and one to try James Colbert, are to be chosen by defense and prosecution at the same time May 7 so Circuit Judge High Taylor can isolate one of the juries from news coverage.

Oliver and Colbert are to be tried in two, separate, consecutive trials. Each of the Negro youths is charged with first-degree murder in the firebombing death of Travis Earl Crow a year ago.

Judge Taylor said he would call enough prospective jurymen for defense and prosecution to draw two 12-man juries, plus two alternates on each jury.

He said he would then send the second jury home." . . . and instruct that second jury not to listen to any accounts in the news or from other people of the progress of the first trial."

★ ★ ★

Judge Taylor's action came yesterday as he selected 75 more prospective jurymen to supplement the 60 already called for the trials.

He also refused a motion by the defense to quash all prospective jurymen selected by the County Commission on grounds of racial projudice.

Defense attorney Reese Marshall argued that the jury called should be rejected because it did not reflect the racial balance of the community at large.

The judge dismissed the request after hearing testimony from Supervisor of Elections Wilma Sullivan, and after hearing arguments by Marshall and state's prosecutor Harry Morrison.

Mrs. Sullivan testified that white jurymen selected from the current jury list represent eight per cent of the total whites registered to vote in the county; but that the number of Negro jurymen selected represents only three per cent of the currently used voter registration roll.

Marshall contended that two U. S. Supreme Court decisions specifically ruled that this was not a valid jury because it did not maintain racial balance.

★ ★ ★

But after prosecutor Morrison introduced testimony that the county commissioners are bound by law to select those they know as "good and true men, qualified to serve on a jury," Judge Taylor refused to grant the motion to dismiss the called jurymen.

The hearing yesterday was the only open court hearing in the case in which the dead boy's father was not present.

The trial of Billy Ray Oliver begins May 7, a Wednesday, with the selection of a 12-man jury and two alternate jurors in case of death or incapacitation of one of the regular jurors.

The trial of James Colbert is scheduled to begin the following Monday, May 12.

Defense and prosecution have 10 "pre-emptory" challenges of jurors; that is, each may dismiss any juror for no stated reason.

MAY 7, 1969

Selection Of Crow Jury Begins

A jury to try Billy Ray Oliver, the 19-year-old accused of the first degree murder of Travis Earle Crow III a year ago, moved into the afternoon with six prospective jurors already dismissed.

Oliver is one of two youths accused of murdering the Crow boy by fire-bombing his home in the early hours of April 5, 1968.

The burning of the Crow family store-home was part of violence which erupted here after Dr. Martin Luther King Jr. was assassinated in Memphis, Tenn.

Defense Attorneys for Oliver are Alvin J. Bronstein, Cambridge, Mass., and Reese Marshall, an NAACP Attorney from Jacksonville.

Chief prosecutor is Asst. State Atty Harry Morrison, with former county prosecutor Jim L. Dye assisting him. It was Dye who issued warrants for Oliver and James Colbert, the other youth accused of murder in the case.

Colbert is scheduled to go to trial immediately after Oliver's trail is concluded.

Judge Hugh Taylor has said that he intends for Defense and Prosecuting attys. to choose jurys for both trials today.

Firebombing Case in Court

Tallahasee Democrat
May 8, 1969

Steely-Voiced Father Tells How His Son Died

By BRIAN HOWLAND
Democrat Staff Writer

A steely-voiced father told of the night his son died in their blazing home more than a year ago as Billy Ray Oliver, a 19-year-old Negro, went on trial for his life yesterday.

Travis Earl Crow III was the victim of smoke inhalation and asphyxiation in his smoke-filled bedroom, the county coroner said, the night of violence here that followed the assassination of Dr. Martin Luther King Jr. in Memphis, Tenn.

The first witness for the state, Travis Crow Jr. told of the family activities the night of the fire and of the last time he saw his son alive.

"When he got into his room (that night) I hollered at him and told him to bring two shotgun shells out of his room and put them on my night table, which he did.

"And then he went back to his room and to bed, and that's the last time I seen him."

Testimony was to resume today.

Both defense and prosecution waived opening arguments, but Oliver's defense attorney, Alvin J. Bronstein of Harvard University, said he would argue to the jury when the state rested its case.

★ ★ ★

THROUGHOUT THE more than nine hours of court, the Crow family lawyer, former county prosecutor Jim L. Dye, sat with State Atty. William D. Hopkins and his assistant Harry Morrison.

He said he would take no active part in the prosecution other than to consult with Hopkins and Morrison. He said he was at the prosecution table at the request of the elder Crow, and with the permission of Hopkins and Judge Hugh Taylor.

The Crow family sat throughout the court session which included more than six hours of examining prospective jurymen to choose the all-white, 11-man and one woman jury.

Judge Taylor twice refused defense pleas to change the location of the trial after Bronstein pointed out, "not one of the jurors we have examined has not read of this case in the newspapers."

Bronstein is co-counsel with Jacksonville NAACP attorney Reese Marshall for Oliver and another defendant, James Colbert.

Colbert is to be tried also on a first degree murder charge in the Crow death in a trial scheduled for Monday.

Judge Taylor yesterday decided against impaneling juries for both trials at the same time, as he had suggested earlier.

He did, however, put prospective jurymen for that trial under edict not to listen to any radio or television news accounts or read any newspaper articles about the Oliver trial.

"While the trial against the other defendant (Colbert), is a different trial, it is similar," he cautioned.

"Do not discuss this case with anyone," he ordered. "If anyone attempts to say anything to you or in your presence or near any one of you, tell them that you are part of a jury impaneled to hear a similar case and not to talk about it and that you cannot talk about it.

"Ask them to stop. If they persist, leave them at once and report the matter to the court."

Judge Taylor emphasized that contempt of court charges would be brought against anyone who refused to stop talking about the case.

All witnesses in the case are under similar orders.

★ ★ ★

THE JURY in the Oliver case last night was housed in the Floridan Hotel under armed sheriff's guard; the 12-man jury and the one alternate juryman chosen in case one of the regular jurymen is incapacitated were completely insulated from outside contact.

Their reading and television viewing was ordered stringently censored by the sheriff's bailiffs.

During selection of the jury, 24 jurymen were excused from serving: Judge Taylor excused 10 for prejudice; prosecutor Morrison excused six; and Bronstein excused eight.

Four of the six excused by the prosecution were Negroes, the only four Negroes called to the jury.

Three of those excused were let go by the judge because they said they would accept a policeman's word over an ordinary citizen's.

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He also told of a three-foot wide spot behind the plate glass window of the store where "there was a spot burned near about clean through," and of another similar spot near the front door.

And of Billy Ray Oliver, a Negro boy he had known "at least five years around the store and as a customer."

And as someone who tried to sell him a gun the day Dr. King was killed.

Tallahassee Democrat May 8, 1969

Detective Is Unable to Pinpoint Spot Where Crow Fire Started

By BRIAN HOWLAND
Democrat Staff Writer

Sheriff's detective Larry Campbell admitted today he could not swear where the blaze began in the Lake Bradford Road store where Travis Earle Crow III died a year ago.

Campbell, testifying in the trial of Billy Ray Oliver for first-degree murder, identified where the worst part of the blaze in the store was, but under cross examination, said he was not expert enough to pinpoint the origin of the fire.

"You mean, you could not swear that the fire did not start at the kerosene pump outside the store?" Defense Attorney Alvin J. Bronstein asked.

"No, I could not," Campbell replied.

Earlier this morning, Judge Hugh Taylor put three witnesses under $250 appearance bond for failing to show up in court at 8 a.m.

The witnesses, Mary, Martha and Earnestine Peterson, are defense witnesses who the defense will probably call in an attempt to show that state attorney investigator Ronny Hays forced them into perjury.

Defense co-counsel Reese Marshall, an NAACP attorney from Jacksonville, attempted to take depositions earlier in the year for this purpose. Hays has denied the charge.

Judge Taylor excluded the press and defense and prosecution attorneys to question the three Negro women later yesterday.

In other testimony today, Fire Captain James Curitan said he did not investigate the Crow grocery store-home fire for arson because Fire Chief Earl Levy told him to leave that to law enforcement officers.

Tallahassee Memorial Hospital records and the testimony of Curitan and nurse Mrs. Elizabeth Dowell, showed that Crow was administered mouth to mouth resuscitation immediately after firemen reached him, was put under a resuscitator enroute to the hospital, that he arrived at 3 a.m. exactly, but was pronounced "dead on arrival" at 3:15 by Dr. David Cole who had administered resuscitation techniques.

Captain Curitan, the first man to reach Crow, said he thought the 19-year-old was dead when firemen broke into the room.

State Atty. William D. Hopkins stepped into the trial late this morning to examine Lt. Campbell.

Yesterday a steely-voiced father told of the night his son died of smoke inhalation and asphyxiation in their blazing home.

Travis Crow Jr. described the family activities the night of the fire and of the last time he saw his son alive.

"When he got into his room (that night) I hollered at him and told him to bring two shotgun shells out of his room and put them on my night table, which he did.

"And then he went back to his room and to bed, and that's the last time I seen him."

Testimony was to resume today.

Both defense and prosecution waived opening arguments, but Oliver's defense attorney, Alvin J. Bronstein of Harvard University, said he would argue to the jury when the state rested its case.

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THROUGHOUT THE more than nine hours of court, the Crow family lawyer, former county prosecutor Jim L. Dye, sat with State Atty. William D. Hopkins and his assistant Harry Morrison.

He said he would take no active part in the prosecution other than to consult with Hopkins and Morrison. He said he was at the prosecution table at the request of the elder Crow, and with the permission of Hopkins and Judge Hugh Taylor.

The Crow family sat throughout the court session which included more than six hours of examining prospective jurymen to choose the all-white, 11-man and one woman jury.

Judge Taylor twice refused defense pleas to change the location of the trial after Bronstein pointed out, "not one of the jurors we have examined has not read of this case in the newspapers."

Bronstein is co-counsel with Jacksonville NAACP attorney Reese Marshall for Oliver and another defendant, James Colbert.

Colbert is to be tried also on a first degree murder charge in the Crow death in a trial scheduled for Monday.

Judge Taylor yesterday decided against impaneling juries for both trials at the same time, as he had suggested earlier.

He did, however, put prospective jurymen for that trial under edict not to listen to any radio or television news accounts or read any newspaper articles about the Oliver trial.

"While the trial against the other defendant (Colbert), is a different trial, it is similar," he cautioned.

"Do not discuss this case with anyone," he ordered. "If anyone attempts to say anything to you or in your presence or near any one of you, tell them that you are part of a jury impaneled to hear a similar case and not to talk about it and that you cannot talk about it.

"Ask them to stop. If they persist, leave them at once and report the matter to the court."

Judge Taylor emphasized that contempt of court charges would be brought against anyone who refused to stop talking about the case.

All witnesses in the case are under similar orders.

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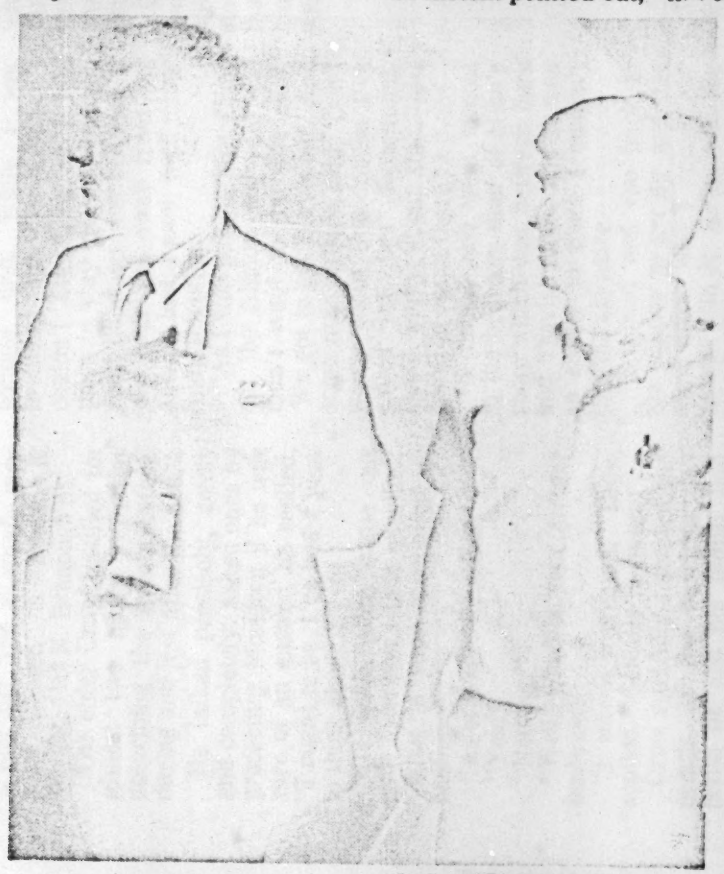
THE JURY in the Oliver case last night was housed in the Floridan Hotel under armed sheriff's guard; the 12-

(Continued on Page 21)

Billy Ray Oliver in Corridor
. . . accompanied by Harry Chaires



Democrat Photo by Earl Warren

Travis Crow Jr. With Son Larry
. . . testified about night's events

MAY 8, 1969 (cont.)

2

Crow Trial in 2nd Day

(Continued from Page 15)

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Their reading and television viewing was ordered stringently censored by the sheriff's bailiffs.

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MAY 8, 1969 (CON'T.)

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(Continued from Page 15)

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Tallahassee Democrat May 9, 1969

Crow Murder Trial Resumes

'Confession' Allowed Following Arguments

By BRIAN HOWLAND
Democrat Staff Writer

Judge Hugh Taylor today allowed "confessions" to be used by the prosecution to convict 16-year-old Billy Ray Oliver of first degree murder.

The jury, which was dismissed at noon yesterday so that defense and prosecution could argue if the "confessions" were admissible, was recalled to the court room at noon today, 24 hours later.

Defense attorney Alvin J. Bronstein attempted to show that Oliver did not have the intelligence to understand officers telling him he could have an attorney while he was being questioned about the fire at the Crow family store in which Travis Earl Crow III was killed.

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BRONSTEIN SAID that the warnings given Oliver by sheriff's detectives were insufficient under six U. S. Supreme Court decisions.

He said Oliver, who was described as a "moron" by his sixth grade teacher and as "retarded" by a Florida State University psychology professor, was incapable of understanding the legal warnings which officers told him.

Sheriff's Detectives Larry Campbell and E. B. Chaires were closely questioned early today about circumstances surrounding several interrogations of Oliver during investigation of the Crow fire.

Florida Bureau of Law Enforcement lie detector expert Joe Townsend was also questioned about his demeanor when he put Oliver on the polygraph machine.

D. Wallace Kennedy, a professor of psychology at FSU, said that "idiot, imbecile, and moron are not commonly used terms any more."

He said that any IQ below 80 when tested on the California Mental Aptitude Test is considered "retarded."

Oliver's cumulative school record shows the California Test rated his IQ at 71 a year before he was forced to remain in seventh grade for a second year and then dropped out of school.

★ ☆ ☆

AFTER DEFENSE and prosecution questioned Kennedy, Judge Taylor asked Kennedy if the California Test did not reflect educational progress as well as basic intelligence, and if this could not give an erroneous picture of native intelligence. Dr. Kennedy said it could.

Bronstein also objected to the "confessions" and interrogations of Oliver on grounds that they were "highly suspect" under rulings by the U. S. Supreme Court.

Judge Taylor denied Bronstein's motion to suppress the confessions, and overruled his objections to the way in which they were taken from Oliver by detectives.

Yesterday, with the jury out of the court room, Chaires was asked by Bronstein, "Does this statement of his (Oliver's) show that he was told he could have a lawyer at the time he was being interrogated and at the time this transcript was made?"

"Not in those words," Chaires answered.

Bronstein asked the same question of Campbell, and received a similar response. Neither man said that Oliver, who was called a "moron" by his sixth grade teacher, was told directly that he could have a lawyer present at the time the officers were talking to him.

The prosecution, sometimes led by Asst. State Atty. Harry Morrison and sometimes his boss William D. Hopkins, produced the name of a "surprise witness," an inmate at the Leon County Jail, Jess Davis.

Chaires testified that it was another inmate, L. C. Shuler — a Negro who was brought back from serving time in the state prison at Raiford to testify in this case — had first told him that Oliver was involved in the burning of the Crow family store last April.

Oliver himself was called to the witness stand by Bronstein and associate counsel Reese Marshall, an NAACP attorney from Jacksonville.

Oliver said under oath that he did not understand that he could have an attorney with him when he was questioned. "I wasn't paying much attention," he said.

Asked by Bronstein if he knew what a "waiver" was, Oliver said he did not.

Oliver signed a prepared statement waiving his rights to an attorney when he was questioned.

The last testimony to go before the jury was Lt. Campbell's investigation of the Crow fire scene and three other fire scenes during the night of violence here which erupted after Dr. Martin Luther King Jr. was assassinated in Memphis, Tenn.

After Campbell was examined on his part in the interrogation of Oliver, Bronstein called Mrs. Irene Perry, now a teacher at Kate Sullivan Elementary School, who was Oliver's sixth grade teacher at Pineview Elementary School in 1965 and '66.

Using Oliver's cumulative school record, she testified that Oliver was held back to repeat the first grade, was doing third and fourth grade work in the sixth grade, was maintaining a "D" average while in her class and had an I.Q. of 71.

Oliver's school record showed that he had been "retained" in the seventh grade after being transferred to Frank C. Nims Junior High School in 1966. Oliver said he had dropped out in the Spring of 1967.

Testifying before Judge Taylor, Oliver said he had been threatened by Campbell and offered $3,000 by Chaires in questioning. None of that was borne out in recorded questioning at the jail or in the courthouse. Chaires and Campbell denied the charge on the stand.

Oliver said that he was kept in jail 31 days without bail on a trespassing charge for being on the Leon County Juvenile Detention Center grounds.

Oliver said he is now 16, was 15 at the time of his arrest and detention in the county jail.

He said he was kept in "solitary confinement," in a similar cell but away from other prisoners at the county jail during his detention.

Bronstein asked when he had first seen a lawyer and Oliver said it was at his preliminary hearing, a month after former Sheriff W. P. Joyce announced Oliver was arrested for the murder.

Arrest warrants were dated five days after the announcement. Joyce has not been subpoenaed for the trial.

Oliver further said that the preliminary hearing June 26 was the first time he had been taken before a judge on the murder charge.

Tallahassee Democrat May 10, 1969

Murder Case

Mistrial Denied In Oliver's Trial

By BRIAN HOWLAND
Democrat Staff Writer

Defense attorney Alvin Bronstein demanded a mistrial Friday afternoon when a prosecution witness produced two missing pages of Billy Ray Oliver's confession to his part in the 1968 burning of the Crow store.

The last two pages of the confession turned up when sheriff's detective Larry Campbell wound up with two more pages than Asst. State Atty. Harry Morrison as they read Oliver's confession into the trial.

Bronstein leaped to his feet. "I object, your honor," he said, "the prosecution was ordered by you to submit all statements made by (Oliver) to us some time ago. Now two more pages turn up, and while the jury is here."

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BRONSTEIN first asked the judge to throw out the entire confession which told of Oliver and five others burning the store in which Travis Earl Crow died, but Judge Hugh Taylor refused.

He also refused to allow the last two pages of the statement made by Oliver to be read to the jury, despite an impassioned plea by State Atty. William D. Hopkins that the jury had a right to know.

"You were ordered to submit copies of all statements made by (Oliver) to defense counsel," the judge said. "This was not done and I will not allow those last pages into evidence."

Hopkins countered by playing the actual recording of the confession to the jury, but the judge stopped the recording when it reached the page where the written transcript stopped.

The trial continued into the night. Judge Taylor said he wanted to conclude the trial before the weekend if possible.

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LATE LAST NIGHT, the prosecution still had not rested its case, and was trying to introduce another confession taken by prosecutor Morrison a few days after Campbell took the original confession last year.

Yesterday afternoon, police officer Gene Faircloth surprised the defense by testifying he saw an unexploded firebomb burning on the porch of the Crow grocery store home moments before the fire engines arrived.

Faircloth said he had not testified to that before although he was called to the stand Thursday.

He said he had testified to seeing the firebomb as his patrol car cruised past the store when he was called before the Leon County Grand Jury last December. He also told The Democrat the same thing the night of the fire last year. This was published the following day.

Bronstein three times Friday asked Judge Taylor to declare a mistrial in the case, twice in controversy over the confession by Oliver being introduced in the case.

Bronstein called for a mistrial also when State Atty. William D. Hopkins mentioned Oliver's "confession" before any mention of any statement had been made to the jury.

Judge Taylor refused all three requests, but did caution Hopkins against using the word "confession" until the statement had been introduced into evidence after Bronstein asked that Hopkins and Morrison tone down their staff conferences on prosecution of trial so the jury could not hear.

The first-degree murder trial went into its fourth day today at 8 a.m. Prospective jurymen and witnesses for the impending trial of James Colbert for first-degree murder of Travis Earl Crow III have been told that trial has been continued from Monday on a day-to-day, term-to-term basis.

It is to be begun immediately after Oliver's trial is concluded; all jurors and witnesses have been told not to read news accounts of this trial.

In his confession of last May, Oliver implicated Colbert and four other Negroes, identified as Curtis Wortham, David, Louis and Rossie Lee Howard.

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ALL SIX were arrested for murder last year and held without bond by former Sheriff W. P. Joyce, but the grand jury Dec. 6 indicted for first-degree murder only Oliver and Colbert, declining to indict the other four.

Oliver's confession told of the Negroes attempting to burn another store before throwing gasoline on the Crow store in containers "about the size of soda bottles."

In the statement, he said he and the others lofted gasoline filled conainers onto the roof.

He said Wortham was the one who pawned the elder Crow a gun and who Crow had called a "nigger." He said Wortham had vowed to get even with Crow that night even before Dr. Martin Luther King was killed.

In earlier testimony, Travis Crow Jr. identified Oliver as the person who tried to pawn the gun.

During the day of testimony, Bronstein made a concerted attempt to impeach witnesses Campbell and former detective E. B. Chaires Jr.

Key in the question of the impeachment attempt was Oliver's testimony while the jury was not in the courtroom that Chaires had offered him $3,000 to confess and that Campbell and other officers had intimidated him with threats of the electric chair.

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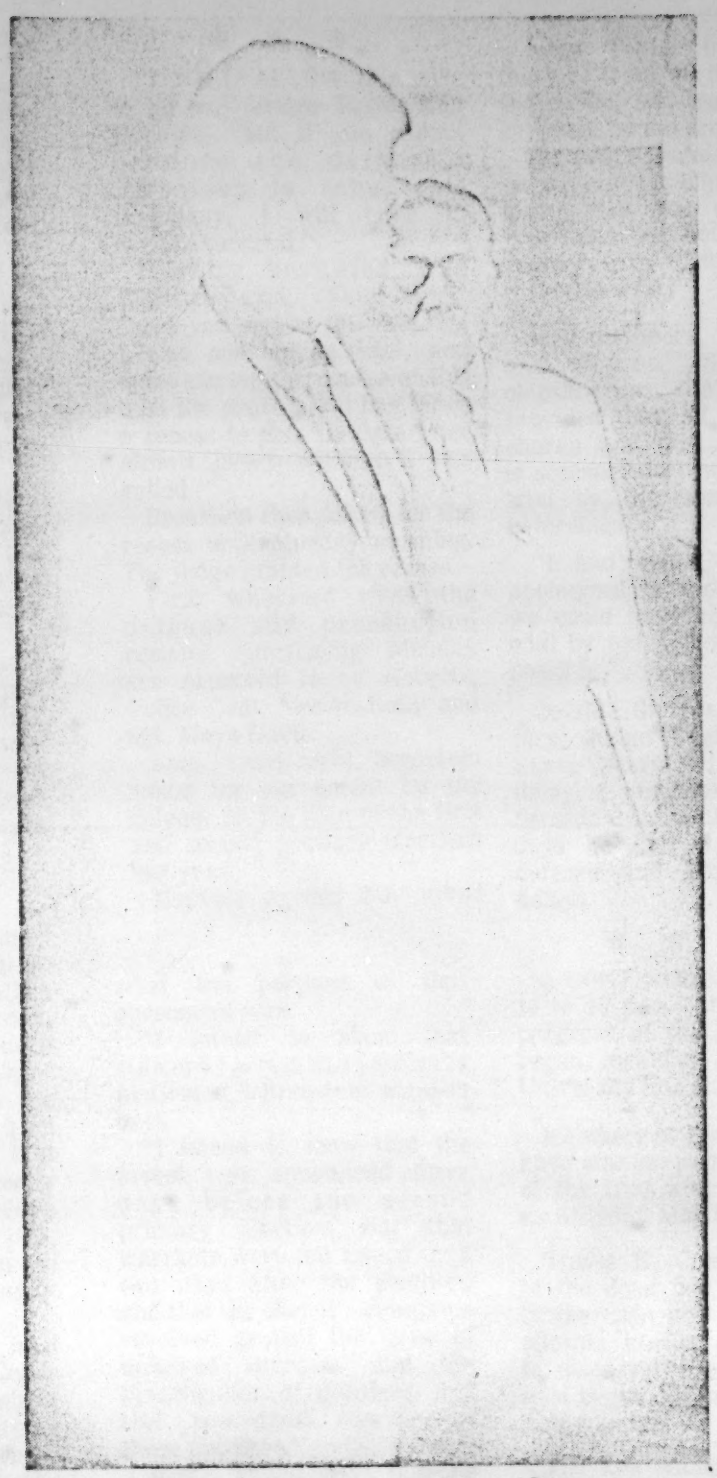
EARLIER testimony showed that Crow III died of asphyxiation and smoke inhalation in his bedroom of the family home on April 5, 1968.

TALLAHASSEE DEMOCRAT MAY 10, 1969



Democrat Photo by Earl Warren

Attorneys For Billy Ray Oliver
. . . Reese Marshall (l) and Alvin J. Bronstein

Attorney Explains New Dean Morse

Defense attorney for Billy Ray Oliver now on trial for murder here, Alvin J. Bronstein, was guest lecturer at the University of Mississippi when Florida State University's new law school dean Joshua Morse took over there in 1964.

"I understand he has come under fire by Ole Miss officials," Bronstein said during a break in the trial, "and I'm not surprised."

"He's a far thinking man. He was responsible for the first civil rights law seminars at Ole Miss in 1964."

Morse resigned as dean of the Ole Miss law school to become dean of FSU's school July 1. He replaces retiring dean Mason Ladd.

In Account of Convict

Oliver Linked to Death

BY BRIAN HOWLAND
Democrat Staff Writer

A convict from the State Prison at Raiford said Billy Ray Oliver bragged of getting "those white devils" the night after the Crow family store burned killing Travis E. Crow III last year.

Oliver, a 16-year-old who has spent the last year in the county jail without bond on the first degree murder charge, sat stoically as L. C. Shuler told of four times that Oliver mentioned his part in the Crow fire.

Shuler, who was arrested and convicted of burglary and violation of probation since the Crow fire incident, was brought back to Leon County to testify against Oliver.

Judge Hugh Taylor recessed the trial for the weekend just before 4 p.m. Saturday, telling the jury, "it has become apparent we can make no further progress in this trial today. This court is in recess until 8 a.m. Monday."

★ ★ ★

THE JUDGE said previously that he had hoped to wrap up the ... by Saturday, but when the court recessed yesterday, the prosecution had not even rested its case against Oliver.

Shuler's testimony was the most damaging taken Saturday. Shuler said that Oliver had told him directly on two occasions before Oliver's arrest May 17, 1968, that he had participated in the burning of the Crow family store.

He said that he had overheard Oliver and Curtis Lee Wortham talking about their participation in burning the store on another occasion.

The judge announced the recess when defense attorney Alvin J. Bronstein objected to a prosecution witness, sheriff's jailor Fulton Roberts, testifying.

"The prosecution assured me," he told the judge, "that Roberts would not be called for this case, but only called in the case against (James) Colbert." Colbert is also charged with murder in the Crow death. His trial is scheduled later.

"I object because this witness testimony is immaterial and irrelevant to the accusations against (Oliver)."

State Atty. William D. Hopkins originally moved for the recess until Monday morning, but Judge Taylor, who held court in session until 11 p.m. Friday, hestitated until Hopkins said that Roberts' testimony would be necessary to progress of the trial.

★ ★ ★

"I WILL ALLOW this case to go on," Judge Taylor told Hopkins, "but if you cannot produce the defense's witnesses to rebut this testimony, I will have to declare mistrial."

Hopkins hesitated, and Bronstein said, "Your honor, I told you earlier this morning I was not feeling well, and today during the course of this trial the prosecution has taken a recess to plan its case after almost every witness it has called."

Bronstein then asked for the recess until Monday morning. The judge granted the recess.

First witnesses when the defense and prosecution resume questioning Monday are expected to be Roberts, Police Capt. Vester Kelly and Sgt. Mayo Davis.

Late Friday night, Bronstein asked for agreement by the defense on the date of the first and second primary elections last year.

Hopkins agreed but asked what the purpose of that agreement was.

"I intend to show that (Oliver's) arrest was politically motivated," Bronstein snapped back.

"I intend to show that the arrest was announced three days before the second primary election, but that warrants were not issued until two days after the election; and that the sheriff's campaign revolved around the issue of unsolved murders and the investigation of murders, and the Crow death was one of those murders."

Judge Taylor said that he would not allow political questions to be tried in court, but that Bronstein was free to question witnesses on their individual motivations for their actions.

★ ★ ★

TWO STATE'S witnesses, Martha and Mary Peterson, who the state said were the girl friends of principals in the case, were called to the stand but their testimony was not heard by the jury on objections by the defense.

In a hearing several months ago, defense attorney Reese Marshall, co-counsel with Bronstein, said he could prove that the two girls and another sister, Earnestine Peterson, were coerced into a statement by state attorney investigator Ronny Hays.

The jury was sequestered over the weekend, as it had been since it was accepted at 3:30 p.m. Wednesday.

Judge Taylor has isolated the jury from all contact with the public, and from all news coverage by the press.

The judge promised the jury an out-of-town trip for dinner today, "so you can stretch your legs but not come into contact with undue influence from this trial."

Jury members, 11 men and one woman, may attend church today, the judge said, provided they all agree on a church and that the sermon is screened for mention of the trial by the sheriff's bailiff beforehand.

"I had hoped," the judge apologized to the jury, "that we could have completed the trial by today, but that is not possible."

Outside the presence of the jury, Judge Taylor chastized State Atty. Hopkins for delaying progress of the trial Saturday. In the three previous days he has chastized both defense and prosecution for delays.

★ ★ ★

A CONTINUOUS audience of 10 to 15 people have watched progress of the trial since it began, including Florida State University law students.

Members of the Crow family have also sat in on all progress of the trial which moves into its fifth day Monday.

Travis E. Crow Jr., father of the dead boy, is a witness in the case and has not been allowed in the courtroom or to discuss the case since the trial began. He was the state's first witness.

The key witness so far has been sheriff's detective Larry Campbell, who took confession from Oliver shortly after his arrest.

A hearing on whether the confession was admissable was held all Thursday afternoon and Friday morning. At noon Thursday, the judge allowed the confessions in the trial record.

Campbell has been called to the stand seven times and has testified for almost eight hours.

He has been the target of impeachment accusations by the defense, as has former sheriff's detective E. B. Chaires Jr.

Asst. State Atty. Harry Morrison has been attorney of record for the prosecution, but Hopkins has stepped in more and more as the trial has progressed.

Saturday, Hopkins conducted all examination of witnesses.

★ ★ ★

DEFENSE ATTORNEY Marshall, a Negro and an NAACP attorney from Jacksonville, has not addressed the court in the past four days of trial.

All cross-examination of witnesses and motions before the court have been conducted by Bronstein.

Marshall, who handled all pre-trial motions, said that Bronstein, from Harvard University, was called into the case because of his experience in capital offense trials.

A first-degree murder conviction against Oliver would carry a death or life imprisonment penalty, depending on whether the jury recommends mercy.

MAY 12, 1969

Crow Death

Case Nears Jury

Defense and prosecution arguments are expected this afternoon in the first degree murder trial of Billy Ray Oliver, accused of killing Travis Earle Crow III last year.

The defense rested its case one hour after the prosecution this morning, and called only three witnesses.

Police detectives Mayo Davis and Vester Kelly said they were called to investigate a smell of kerosene or gasoline on James Colbert and Louis Howard the night of Crow's death, but did not find any evidence of such a smell.

Mrs. Rosalee Peterson and Errolson W. Knowles testified that a previous witness's reputation for "truth and honesty" is bad within the community. Both said that they would not believe L. C. Shuler testifying under oath. Knowles said he has known Shuler from eight to ten years; Mrs. Peterson is the mother of one of Shuler's girl friends.

She further said that Shuler had pulled a gun on her in November of 1967. Shuler is a state prison convict brought back to Leon County. He testified earlier in the trial that Billy Ray Oliver had told him he and six other Negroes had burned the Crow store.

Judge Hugh Taylor was willing to allow the jury to visit the scene of four stores which had been fire-bombed in the area the night of Crow's death until the defense showed that Lake Bradford Road was under construction at the time and that such a trip by the jury would be misleading as to how easily the area could have been negotiated.

State Atty. W. D. Hopkins withdrew his request for the jury to visit the scene.

When the prosecution rested and when he rested his own case, defense attorney Alvin J. Bronstein asked for a directed verdict of acquittal in the case, but was refused by Judge Taylor.

The case was expected to be argued and go to the jury by late this afternoon.

MAY 13, 1969

Oliver Found Guilty

First Degree, But Mercy

By BRIAN HOWLAND
Democrat Staff Writer

Without expression, Billy Ray Oliver heard the verdict last night which condemns him to life imprisonment for the arson murder of Travis Earl Crow III.

Circuit Judge Hugh Taylor silently read the verdict, then handed it to Clerk Jane Sauls.

She turned to the courtroom, and read. "We the jury find the defendant, Billy Ray Oliver, guilty of murder in the first degree as charged. So say we all."

The verdict also recommended him to the mercy of the court.

Circuit Judge Hugh Taylor recessed the court without officially pronouncing sentence, which by law must be life imprisonment.

If the jury had not recommended mercy, the death penalty would have been mandatory.

It took the jury exactly three hours and 50 minutes from the time they left the courtroom until court bailiff Alex Knight announced, "They have a verdict; they are coming back in."

★ ★ ★

OLIVER, DESCRIBED as an underprivileged seventh grade dropout with a 71 IQ, sat passively, his head down, as the jury came in.

After the verdict, he looked up at the jury once, then dropped his eyes to the table again.

Reese Marshall, a Negro NAACP attorney from Jacksonville who began representing Oliver late last year, bent over the table and began speaking softly with the 16-year-old Negro who has spent almost a year in the Leon County Jail awaiting trial.

Co-counsel Alvin J.

(Continued on Page 10)

Oliver

From Page 1

Bronstein, a lawyer from Cambridge, Mass., who is on the faculty at Harvard University, went back to speak with Mrs. Oliver at the rear of the courtroom.

The family of the murdered boy, who sat through the entire trial showing no emotion, quietly left the courtroom.

Asst. State Atty. Harry Morrison, the prosecutor of record in the case, sat quietly in the first row of the courtroom as the verdict was read.

"I've no special feeling now, one way or the other," he said. "It's another job, another case, another trial."

Bronstein, who is on retainer for the Scholarship Education Defense Fund for Racial Equality Inc., said, "Billy Ray and Mrs. Oliver have asked us to appeal; and we will."

Bronstein and Marshall also are defending James Colbert, another Negro youth charged with burning the crow store and killing Crow III.

That trial reportedly now has been delayed until the June term of court.

N.Y. TIMES MAY 14, 1969

NEGRO, 17, IS GUILTY IN A FLORIDA DEATH

Special to The New York Times

TALLAHASSEE, Fla., May 13—A 17-year-old Negro was convicted in Leon County Circuit Court here last night of the first-degree murder of a white youth in a fire bombing on April 4, 1968, the night the Rev. Dr. Martin Luther King Jr. was slain in Memphis, Tenn.

The jury recommended mercy, which requires the judge to sentence the defendant, Billy Ray Oliver, to life imprisonment.

Another Negro youth, James Colbert, faces trial next month on the same charge. The grand jury returned no true bills against four other young Negroes arrested during a six-week investigation of the fire.

The victim, Travis Earl Crow 3d, died of smoke inhalation in his bedroom in family quarters above a store operated by his father near the campus of Florida A & M University, a Negro school.

Gene Faircloth, the first police officer on the scene, testified that the front of the store was burning and that he had seen a soft drink firebomb spinning in front of another shop as he arrived.

At the time of the fire, many law enforcement officers were stationed around the perimeter of A & M University, where for several hours following news of Dr. King's assassination there had been sporadic shooting of firearms by a small group.

HARVARD UNIVERSITY

JOHN FITZGERALD KENNEDY SCHOOL OF GOVERNMENT

INSTITUTE OF POLITICS

78 MOUNT AUBURN STREET
CAMBRIDGE 02138

MAY 15 1969

May 15, 1969

Carl Rachlin, Esq.
164 Madison Ave.
New York, New York

Re: OLIVER

Dear Carl:

I am enclosing a copy of the motion for a new trial that we propose to file in the above case. I feel that we have very good grounds for appeal in paragraphs 2 a, f, g, i, j, k, and 4.

Sincerely,

Alvin J. Bronstein

Enclosure

May 22, 1969

Alvin J. Bronstein, Esq.
Harvard University
John Fitzgerald Kennedy School of Government
78 Mount Auburn Street
Cambridge, Massachusetts 02138

Dear Mr. Bronstein:

I am enclosing our check for $359.44, to cover your expenses in the State of Florida vs Billy Ray Oliver case. Spiver Gordon says you were magnificent, and won the trial six or seven times. We are most grateful for everything you have done.'

Sincerely,

Marvin Rich
President

ldb
enc

HARVARD UNIVERSITY

JOHN FITZGERALD KENNEDY SCHOOL OF GOVERNMENT

INSTITUTE OF POLITICS

78 MOUNT AUBURN STREET
CAMBRIDGE 02138

March 2, 1970

RECEIVED

MAR 4 1970

Mr. Marvin Rich
SEDFRE
164 Madison Avenue
New York, New York

Re: State v. Oliver & Colbert

Dear Marvin:

I thought you might want to have a copy of the brief I have just filed in the Tallahassee arson-murder cases I handled last summer for you at Carl's request.

I am sure we will have the convictions reversed, either here, or at the next step up.

Best regards.

Sincerely,

Alvin J. Bronstein

Enclosure

...DSON, WAYNE VS. BOARD of EDUCATION of MALVERNE, NEW YORK 1965

Box 41
Folder 19

...Society Of Wisconsin

Please Retain Original Order

MATTER OF VETERE v. ALLEN

SCILEPPI, J. (Dissenting)

Union Free School District No. 12 of the Town of Hempstead, commonly known as the Malverne-Lakeview School District, lies partially within the villages of Malverne and Lynbrook, and includes some incorporated areas of the Town of Hempstead. The public school facilities are comprised of a senior high school, a junior high school and three elementary schools. At the present time, the junior and senior high schools accommodate all children in grades 6-12 in racially balanced classes. Thus, only the three elementary schools serving grades 1-5 are here in question.

These three elementary schools are so-called neighborhood schools, each serving a small compact residential area and each reflecting the composition of the surrounding residential neighborhood in its pupil enrollment. The attendance zones or areas for each school were laid out many years ago and all parties to the present action agree that considerations of race, color or creed played no part in their formation. Rather, the lines were drawn with such factors in mind as safety, traffic conditions, proximity to the home and various other interests which were in keeping with prevailing attitudes recognizing the advantages of making the school an integral part of a given neighborhood. It was thought that great benefits were derived from such an arrangement in the form of greater parental interest in the activities of the school and greater exchange of ideas between home and school.

The three elementary schools in the district are called the Woodfield Road School, Davison Avenue School and the Lindner Place School. It seems that while the attendance areas served

by these three schools were comparable for some time, the attendance area served by the Woodfield Road School has had a substantial increase in negro residents and this, naturally, has become reflected in the pupils attending the Woodfield School. So far, the School Board has attempted to rectify the resulting imbalance by transferring pupils from Woodfield to one of the other two elementary schools, but the imbalance at Woodfield continues.

In an attempt to correct the racial imbalance in grades 1-5, negro children, through their parents appealed to the Commissioner from the refusal of the Board of Education to alter the zoning areas for school attendance, pursuant to Section 310 of the Education Law providing for such appeals. The Commissioner appointed a 3-member committee, containing two members of the NAACP, to investigate the situation. This Committee found that the attendance areas were of suitable size, as compact as possible, and placed the children within convenient walking distance of their schools. The Woodfield Road pupils were afforded programs of remedial work and enrichment at all grade levels. Relying upon its personal inspection of the three schools, the Committee stated that the educational standards, as well as the quality of the teaching, were similar. In addition, the Committee noted that the action of the local board was not arbitrary and was not actuated by an attempt to contain the negro population by means of artificial school zones. A finding was made that the Woodfield Road School was racially imbalanced, and ipso facto social, psychological and educational problems exist in this school district. In short,

the Committee found that the school district under consideration was "an excellent example of administrative planning", not created to separate the races, and that all the tangible aspects of education were equal. The Commissioner, concluding that a racial imbalance deprived the negro children in Woodfield Road School of equal educational opportunities, ordered that the attendance areas of the district be drawn so that all children from kindergarten through the third grade attend either the Davidson Avenue or Lindner Place elementary school, and that all children in fourth and fifth grades attend the Woodfield Road School.

Although the legislature has bestowed a vast grant of power upon the Commissioner of Education, the courts do have a limited scope of review. We have held that the courts possess the power to review his acts only when they are "purely arbitrary" (Matter of the Board of Education of the City of New York v. Allen, 6 N Y 2d 127). As courts approach the pivotal issue of arbitrariness, proper performance of their function requires that the administrative agency show the actual grounds for its decision (Matter of Scudder v. O'Connell, 272 App. Div. 251). This exposition of the reasons for a decision has a two-fold purpose. First, it enables the court to determine whether the findings themselves are properly supported by the evidence, and, second, it is necessary to determine whether the facts found support the decision itself (Matter of Scudder v. O'Connell, 272 App. Div. 251, supra).* In N. Y. Water Service Corp. v. Water

* Of course, the reasons underlying the determination are necessary to enable an aggrieved petitioner to ascertain which avenue of attack should be selected.

Power & Control Comm. (283 N. Y. 23) we stated:

> "Findings of fact in support of decisions by courts and administrative boards alike serve to give assurance to parties concerned that the decisions are based upon evidence of record and were not reached arbitrarily or influenced by extra-legal considerations * * * * findings of fact in some form are essential to enable the parties and any appellate court intelligently to determine whether the decision follows as a matter of law from the facts stated as its basis and whether the findings of fact have any substantial support in the evidence." (at p. 30).

Throughout our reports, cases reiterate the substance of the above extract (see, e.g., Matter of Barry v. O'Connell, 303 N. Y. 46; Matter of Perpente v. Moss, 293 N. Y. 325; Matter of Elite Dairy Products v. Ten Eyck, 271 N. Y. 488).

The Commissioner reasons as follows:

Major Premise: Racially imbalanced schools always afford unequal educational opportunities.

Minor Premise: This school is racially imbalanced.

Conclusion: Therefore, this school affords unequal educational opportunities.

Since the record before this court is utterly barren of any evidence which supports the Commissioner's conclusion that racial imbalance (an uncertain and indefinable phrase) necessarily results in unequal educational opportunities, I am constrained to hold that he has acted in a "purely arbitrary" manner. If it is not purely arbitrary to conclude and give no reasons therefor, I cannot conceive of any situation which may be so characterized.

Although I recognize the vast amount of power which is deposited in the Commissioner, I am unwilling to join the majority in placing him in an insulated position from which he is permitted

to pronounce unreviewable conclusions devoid of any evidentiary support. Undoubtedly such is the reasoning of the prevailing opinion which, for all practical purposes, closes the courthouse doors to those who seek to review acts of the Commissioner in this area. If they are correct in the conclusion reached, the majority must be prepared to hold that assignment of pupils to create an ethnic or religious balance, or even the transportation of pupils (e.g., bussing) to implement a balancing plan, is beyond the review of the courts and may not be questioned therein. When the Commissioner states that he is acting in furtherance of sound educational policies, albeit there is no evidence in the record to support him, the majority holds that the courts will not be available for review.

I am unimpressed by the argument that the Commissioner might produce evidence and make findings to support his conclusions. Our function is to judge a case on the record before the court, not on assumption, speculation or conjecture.

Viewing the case in this posture, I need reach neither the impact of Education Law, §3201, nor the constitutional question to which Judge VAN VOORHIS has addressed himself, both of which the majority necessarily passes upon. However, I do state that I do not consider Matter of Balaban v. Rubin (14 N Y 2d 193) authority in cases of this nature because: (1) that case concerned the selection of a site for a new school; (2) race was not the sole factor which actuated the choice of location; and (3) there were neither transfers nor "oppressive results" involved.

For the reasons stated above, I vote to reverse the order of the Appellate Division.

* * * * * * * * *

Order affirmed, without costs. Opinion Per Curiam. All concur except Van Voorhis and Scileppi, JJ., who dissent in separate opinions.

State of New York
Court of Appeals

March 18, 1965

OPINION

UNREVISED AND UNCORRECTED. NOT FOR PUBLICATION.

3. No. 329.
In the Matter of
the Application of Michael Vetere
Individually &c.,
Appellant,
For an Order & c.,
vs.
James E. Allen, Jr., as Commissioner of Education of the
State of New York,
Respondent.

(and anther proceeding).

PER CURIAM:

The issue posed by the petition in terms of racial balance, which balance the Commissioner now avers is essential to a sound education is not reviewable by this Court as the following quotations from opinions show. The purpose of the grant of quasi judicial powers under Section 310 of the Education Law is "to make all matters pertaining to the general school system of the state within the authority and control of the Department of Education and to remove the same as far as practicable and possible from controversies in the Courts" Bullock v. Cooley, 225 N.Y. 577 (1919). "By our state system of education protected by the Constitution and developed by much study and experience, the Commissioner of Education is made the practical administrative head of the system, and in his exercise of sound wisdom, as we believe, the legislature deemed it best to make him the final authority in passing on many questions bound to arise in the administration of the school system and has provided an expeditious and simple method by which a disposition of such questions could be reached through appeal to him" People of the State of New York ex rel Board of Education of the City of New York v. Finley, 211 N.Y. 51, 57 (1914). "In appraising the judicial nature of the act of the Commissioner of Education

it must be remembered that he combines both judicial and administrative functions. When he decides appeals where he has occasion to construe statutes he undoubtedly acts in a judicial capacity. But in passing upon the propriety of educational policy by a particular school board or school district, he acts in a broader capacity than the courts by reviewing at times administrative acts of discretion of which a court would refuse to take cognizance" Craig v. Board of Education of the City of New York, 173 Misc. 969, affd 262 App. Div. 706 (1941). See also, Matter of Ross v. Wilson, 308 N.Y. 605, 617 State Commissioner's opinion of February 15, 1965 in Dixon v. City of Buffalo; Laws of 1812, ch. 242; Laws of 1854, ch. 97; Laws of 1864, ch. 555.

This is merely a reaffirmation of a principle contained in New York law for over 130 years.

In Easton v. Calendar, 11 Wend. 91, 95 (1833), the court stated: "The plaintiff below was not without his remedy, 1 R. S. 487, § 110, 11 ; and the amendment of the law, 20th April, 1830, provides that any person conceiving himself aggrieved in consequence of any decision made by the trustees of any district in paying any teacher, or concerning any other matter under the present title, (which includes the whole of the school act,) may appeal to the superintendent of common schools, whose decision shall be final. This provision was intended for what it practically is, a cheap and expeditious mode of settling most, if not all of the difficulties and disputes arising in the course of the execution of the law. A common law certiorari would no doubt lie from this court to the trustees, to bring up and correct any erroneous proceeding not concluded by an adjudication of the superintendent, or in a case where his powers were inadequate to give the relief to which the party was entitled."

A recent case illustrating the Commissioner's unusual authority to overturn a local board's orders solely from the standpoint of alleged sound education policy is Matter of Board of Education of the City of New York (New York v. Allen, 6 N.Y. 2d 127 (1959)). In that case a decision

by the Commissioner that the local board's policy of requiring teachers who were former communists to identify colleagues as party members was educationally unsound was not disturbed by this Court on the ground that his decision was final. In arriving at this result, the Court was fully cognizant of the fact that both the Feinberg Law, Section 3022 of the Education Law, and Section 201 of the Board of Regents Regulations directed boards of education to take steps to eliminate subversive elements in their school system. Here the Board of Regents under authority of Section 207 of the Education Law has declared racially imbalanced schools to be educationally inadequate. The Commissioner under Sections 301 and 305 of the Education Law has implemented this policy by directing local boards to take steps to eliminate racial imbalance. These decisions are final absent a showing of pure arbitrariness.

The Commissioner's decision in this case rests squarely on his finding of the inadequacy of such schools from the viewpoint of educational soundness. Since this Court had decided that the Commissioner, when a similar policy judgment was made, may substitute his judgment for that of the local board even where the action of the local board was not arbitrary, Matter of the Board of Education of the City of New York v. Allen, 6 N.Y. 2d 127 (1959) the decision of the Commissioner in regard to racial balance is conclusive.

Disagreement with the sociological, psychological and educational assumptions relied on by the Commissioner cannot be evaluated by this Court. Such arguments can only be heard in the Legislature which has endowed the Commissioner with an all but absolute power, or by the Board of Regents, who are elected by the Legislature and make public policy in the field of education.

Since we find that the determination of the Commissioner of Education is not arbitrary or illegal, the order of the Appellate Division must

be affirmed.

The order of the Appellate Division is affirmed.

UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF NEW YORK

----------X

WAYNE OLSON, a minor, by ARTHUR OLSON, his parent and next friend,

Plaintiff,

-against-

THE BOARD OF EDUCATION OF UNION FREE SCHOOL DISTRICT NO. 12, MALVERNE, NEW YORK; LUIS BEJARANO, President, Board of Education of Union Free School District No. 12, Malverne, New York; LUIS BEJARANO, FRED HOOK, THOMAS HANRAHAN, PAUL A. STONE and WILLIAM H. MOODY, Members of the Board of Education of Union Free School District No. 12, Malverne, New York; and JAMES E. ALLEN, JR., Commissioner of Education of the State of New York,

Defendants.

----------X

SUMMONS

CIVIL ACTION

NO. 65 C. 1170

To the above named Defendants:

You are hereby summoned and required to serve upon Messrs. GAYLOR, HAMPTON & NEIMETH, plaintiffs' attorneys, whose address is 393 Sunrise Highway, Lynbrook, New York 11563, an answer to the complaint which is herewith served upon you, within twenty days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Sidney R. Feuer
Clerk of Court

By Harold DeAngelis
Deputy Clerk

Dated: November 12, 1965

Note: This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF NEW YORK

- -x

WAYNE OLSON, a minor, by ARTHUR OLSON, his parent and next friend,

Plaintiff,

-against-

THE BOARD OF EDUCATION OF UNION FREE SCHOOL DISTRICT NO. 12, MALVERNE, NEW YORK; LUIS BEJARANO, President, Board of Education of Union Free School District No. 12, Malverne, New York; LUIS BEJARANO, FRED HOCK, THOMAS HANRAHAN, PAUL A. STONE AND WILLIAM H. MOODY, Members of the Board of Education of Union Free School District No. 12, Malverne, New York; and JAMES E. ALLEN, JR., Commissioner of Education of the State of New York,

Defendants.

- -x

COMPLAINT

CIVIL ACTION

NO.....

COMPLAINT

I. STATEMENT AS TO JURISDICTION

1. This is a civil action brought by the plaintiffs on their own behalf for a preliminary and permanent injunction to prevent the deprivation under color of New York law of certain rights, privileges and immunities secured to the plaintiffs by the Constitution of the United States, and statutes enacted pursuant thereto, as hereinafter more fully set forth. The suit also seeks a judgment declaring that all rules, regulations and administrative policies of the defendants sanctioning the deprivation of plaintiffs' rights are unconstitutional and void. Plaintiffs also request that defendants be required to submit a pupil assignment plan whereby assignment of pupils on the basis of racial factors in the Union Free School District No. 12, Malverne, New York, will be prohibited and avoided.

2. Jurisdiction is conferred on this court pursuant to title 42, U. S. Code, sections 1981 and 1983, and title 28, U. S. Code, section 1343(3).

3. The minor plaintiff, Wayne Olson, is a white minor. He attends the Lindner Place School, where he is enrolled in the fifth grade, within Union Free School District No. 12, Malverne, New York. He is a citizen of the United States and a resident and domiciliary of the State of New York. He brings this action by Arthur Olson, his parent, guardian, custodian and next friend, pursuant to Rule 17(c), Federal Rules of Civil Procedure, on his own behalf.

4. The defendant Board of Education of Union Free School District No. 12, Malverne, New York, is a body corporate with power to sue and be sued in its own name.

5. The Board of Education of Union Free School District No. 12, Malverne, New York, and the office of Commissioner of Education of the State of New York, were created by Act of Legislature of the State of New York, and vested by the Legislature with power and authority to make and enforce rules and regulations for the management and control of the public schools within the said School District.

6. The defendant, Luis Bejarano, is President, and the defendants, Fred Hook, Thomas Hanrahan, Paul A. Stone and William H. Moody, are the other members of the Board of Education of Union Free School District No. 12, Malverne, New York. Each of them holds office and performs official duties and functions under the Education Law of the State of New York, and each of them is being sued in his official capacity.

II. FACTUAL ALLEGATIONS

7. There are three elementary schools in Union Free School District No. 12, Malverne, New York. The defendants and their predecessors have divided Union Free School District No. 12, Malverne, New York, into three attendance zones, lying

respectively in Malverne, Lynbrook and Lakeview, each of which contains one elementary school. The Davison Avenue school, is located in Lynbrook, the Lindner Place school is located in Malverne, and the Woodfield Road School is located in Lakeview.

8. For many years prior to the commencement of this action, the defendants and their predecessors have assigned pupils to and within public schools within the District, without reference to race, color, creed or national origin.

9. On or about June 17, 1963, the defendant JAMES E. ALLEN, JR., acting in his official capacity as Commissioner of Education of the State of New York, issued to the aforesaid Board of Education, a directive, compelling such Board of Education to assign pupils within the District on the basis of race. A copy of such directive is attached hereto and incorporated herein by reference, marked Exhibit "A".

10. The aforesaid directive of the Commissioner of Education of the State of New York was predicated upon certain written findings of alleged fact, made by a committee duly appointed by the said Commissioner. A copy of such findings is attached hereto and incorporated herein by reference, marked Exhibit "B".

11. Upon information and belief, the defendants and each of them are preparing to give effect to the aforesaid directive, as a result of which the infant plaintiff will (for racial reasons alone) be excluded from a nearby school which he would otherwise attend, and will be required to transfer to a more distant school, which he would not otherwise attend.

FIRST COUNT

12. The defendants' aforesaid directive and findings, and their administrative policies, rules and regulations, are

in violation of the Fourteenth Amendment to the United States Constitution in that the defendants propose thereby to assign the infant plaintiff to a school which he would not otherwise attend, solely on the basis of race.

SECOND COUNT

13. The defendants' aforesaid directive and findings, and their administrative policies, rules and regulations are in violation of the Fourteenth Amendment to the United States Constitution and in violation of the Civil Rights Act of 1964 (42 U. S. C. Secs. 2000 C et seq.), in that the defendants are preparing thereby to assign the minor plaintiff to a school which he would not otherwise attend, solely on the basis of race.

IRREPARABLE INJURY

14. Because of the defendants' practices, plaintiffs are suffering irreparable injury for the redress of which they have no adequate remedy at Law.

PRAYER FOR RELIEF

WHEREFORE, the plaintiffs pray this court for a declaration that all rules, regulations and administrative policies of the defendants' sanctioning the deprivation of plaintiffs' rights are unconstitutional and void. They also pray for a preliminary and permanent injunction to enjoin and restrain the defendants from enforcing the directive attached hereto as Exhibit "A". Plaintiffs also request that defendants be required to submit a pupil assignment plan whereby the assignment of public school pupils on the basis of race will be eliminated. Plaintiffs pray also for such other and further relief as to this court may seem just and proper.

November 10, 1965.

Respectfully submitted,

GAYLOR, HAMPTON & NEIDETH
393 Sunrise Highway
Lynbrook, New York 11563

Attorneys for Plaintiffs

by: Mason L Hampton

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

WAYNE OLSON, a Minor, by ARTHUR OLSON, his Parent and Next Friend,

Plaintiff,

-against-

THE BOARD OF EDUCATION OF UNION FREE SCHOOL DISTRICT NO. 12, et al.,

Defendants

CIVIL ACTION NO.
65 C 1170

STATE OF NEW YORK)
S.S:
COUNTY OF NASSAU)

ARTHUR OLSON, being duly sworn, deposes and says:

1. I am the father of the infant plaintiff in the within action. I make this affidavit in support of the within motion for a preliminary injunction.

2. My son, Wayne Olson, resides with me at 43 King Street, Malverne, New York. He is enrolled in the fifth grade at Lindner Place School.

Lindner Place School is my son's neighborhood school. In order to reach this school, my son is required to walk two-tenths of one mile. In so doing he crosses on foot four street intersections. The relative locations of our home and the various elementary schools in the district is shown on the map attached hereto as Exhibit "F".

3. I am informed that the defendant Board of Education plans to implement, on or about January 28, 1966, the directive of State Commissioner of Education James E. Allen, Jr., which is attached to the complaint in this action as Exhibit "A".

If such directive is implemented, my son will be

transferred to the Woodfield Road School. This transfer will require my son to walk one-and six-tenths miles to school, and to cross as many as twenty-one street intersections in the process of doing so.

In order to make this journey, my son will be required to cross on foot, among other traffic arteries, Hempstead Avenue; a grade crossing of the Long Island Rail Road; and Ocean Avenue.

4. Hempstead Avenue is one of the most heavily travelled roads in our entire community. It serves as a major north-south artery, and in particular is a main north-south route for numerous commercial buses. Hempstead Avenue is also a major north-south feeder road to and from Southern State Parkway, which is the heaviest -travelled thoroughfare on the South Shore of Long Island.

The grade crossing of the Long Island Rail Road which my son will be required to cross on foot, is very heavily travelled, as will be seen from the fact that at least twenty-eight trains per day pass over this grade crossing. Naturally, train traffic is at its peak of activity during the hours my son will be travelling to and from school, since ours is largely a commuting community.

Ocean Avenue is, if anything, more heavily travelled than Hempstead Avenue. It is a six-lane thoroughfare which evenly bisects our school district. It has no center mall, and is well known to be the speedway of our community.

In addition, the proposed transfer plan will require my son to walk past an extensive wooded area along Pinebrook Avenue. This area is well known in our community to be "lover's nest", a gathering place for undesirables and an obvious danger area for children.

As will be seen from the affidavit of Mr. Nasierowski,

elementary grades 1 through five (on a district-wide basis) now consist (at September, 1965) of 50.0% nonwhite pupils. Keeping in mind the rapid growth of the nonwhite population in our district since 1961, it is obvious that, as of this very moment, the nonwhite enrollment in those grades is already in excess of 50% . In other words, according to Commissioner Allen's directive and his definition, the entire school district is "imbalanced" as far as these grades are concerned. Why, then must my son be subjected to this plan, which has as its stated purpose the elimination of "imbalance", when the entire district (at least the grades in question) is <u>already</u> "imbalanced?"

5. I bitterly protest my son's being made a pawn in Commissioner Allen's wierd sociological chessgame. Entirely aside from the risks of death or injury to which my son is being exposed, the action of the Commissioner in forcing race-consciousness upon my son is in violation of every principle of decency.

WHEREFORE, I respectfully pray that the within motion for a preliminary injunction be granted.

S/ _____

Sworn to before me this
30th day of November, 1965.

S/ _____

MASON E. HAMPTON, JR.
Notary Public, State of New York
No. 30-1655725
Qualified in Nassau County
Commission Expires March 30, 1967

UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF NEW YORK

- x

WAYNE OLSON, a Minor, by ARTHUR OLSON, his Parent and Next Friend,

Plaintiff,

-against-

THE BOARD OF EDUCATION OF UNION FREE SCHOOL DISTRICT NO. 12, MALVERNE, NEW YORK: LUIS BEJARANO, President, Board of Education of Union Free School District No. 12, Malverne, New York; LUIS BEJARANO, FRED HOOK, THOMAS HANRAHAN, PAUL A. STONE and WILLIAM H. MOODY, Members of the Board of Education of Union Free School District No. 12, Malverne, New York; and JAMES E. ALLEN, JR., Commissioner of Education of the State of New York,

Defendants.

CIVIL ACTION

NO. 65 C 1170

- x

PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

GAYLOR, HAMPTON & NEIMETH
393 SUNRISE HIGHWAY
LYNBROOK, NEW YORK

INDEX

STATEMENT AS TO JURISDICTION 1

ISSUES PRESENTED 3

STATEMENT OF FACTS 4

1. The Long Standing Non-Racial Policy of Pupil Assignment in New York State 4

2. The Abrupt 1963 Adoption by Commissioner Allen of A Racially-Oriented Assignment Policy 5

3. The Present Controversy 7

   (a) The NAACP as Instigator, Arbiter and Judge 7

   (b) The Findings of the NAACP-Dominated Committee 9

ARGUMENT

I. THE COMMISSIONER'S RACIAL PLACEMENT PLAN CONSTITUTES A DIRECT REFUSAL TO IMPLEMENT "DESEGREGATION" WITHIN THE PURVIEW OF THE CIVIL RIGHTS ACT OF 1964 13

II. THE COMMISSIONER'S RACIAL PLACEMENT PLAN VIOLATES CONSTITUTIONAL REQUIREMENTS OF EQUAL PROTECTION AND DUE PROCESS 22

III. THE PRESENT CASE IS A PROPER ONE FOR INJUNCTIVE RELIEF 25

ABBREVIATIONS AND EXHIBITS

Unless otherwise indicated, parenthetical references in this Memorandum are to Exhibits in support of the complaint or of this motion. Exhibits "A" and "B" are attached to the complaint. Exhibits "C" through "F" are attached to the motion papers.

STATEMENT AS TO JURISDICTION

This action is brought by Wayne Olson, a minor plaintiff, through Arthur Olson, his parent and next friend, pursuant to Rule 17(C).

The action seeks to enjoin, and to have declared illegal, a racial assignment plan within the public schools of Union Free School District No. 12. Such plan has been directed by Commissioner Allen, acting under color of State Law (New York Education Law, Sec. 310).

The action is founded in part on 42 U.S.C. 1983, which provides as follows:

> "1983. Civil action for deprivation of rights. Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory, subjects or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

It is well established that injunctive relief against deprivation of civil rights, including relief from racial assignment in the public schools, will lie.

Bailey v. Patterson, 323F. 2d 201 (5th Cir. 19)

Stapleton v. Mitchell
60 F. Supp. 51 (D. Kan. 1945).

Providence Journal Co. v. Mc Coy, 94 F. Supp. 186 (D. R.I. 1950), affd. 190 F. 2d 760 (1st Cir. 1951).

Harris v. Gilison, 322 F. 2d 780 (5th Cir. 1963), cert. den. 376 U.S. 908 (1964).

Woods v. Wright, 334 F. 2d 369 (5th Cir. 1964).

Tribune Review Publishing Co. v. Thomas, 153 F. Supp. 486 (W.D. Pa. 1957).

Brooks v. Tallahassee, 202 F. Supp. 56 (D.C. Fla. 1961).

Pitts v. De Witt Special School Dist. No. 1, 84 F. Supp. 975 (D.C. Ark. 1949).

Cooper v. Hutchinson, 184 F. 2d 119 (3rd Cir. 1950).

The present action is also founded in part on 28 U.S.C., 1343, which provides in part as follows:

"1343. Civil Rights and elective franchises. The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

* * *

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure

equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote."

Under the foregoing sections, the question whether there is "color" of state law is a federal, not a state, question.

Marshall v. Sawyer, 301 F. 2d 639 (9th Cir. 62).

ISSUES PRESENTED

1. Does a Pupil Assignment Plan, Which Refers Solely to the Racial Composition of the Pupils' Neighborhoods, Constitute "Desegregation" Within the Mandate of Brown v. Board of Education[1], and the Civil Rights Act of 1964 ?

2. Is the infant plaintiff deprived of equal protection of the laws, or of liberty without due process of law, by a directive of the New York State Commissioner of Education, which

   -excludes plaintiff from his neighborhood school which he would otherwise attend, and

   -requires him to transfer to a more distant school which he would not otherwise attend.

   solely to achieve a racial mixture whereby no school may have "...50 per cent or more negro pupils enrolled" ?

footnote 1 (347 U.S. 483, 74 S. Ct. 686, 98L. Ed. 583 1954)

STATEMENT OF FACTS

1. The Long Standing Non-Racial Policy of Pupil Assignment in New York State

In 1956, two years after the desegregation decisions of the United States Supreme Court, the New York State Commissioner of Education considered the appeal of a Negro mother who contended that the location of a school within the "Negro" section of the school district would, by reason solely of the incidence of Negro population, result in an 80% Negro enrollment; and that such fact would constitute de facto segregation. The Commissioner rejected the appeal, stating :

> "Because of the incidence of location, the mere fact that the preponderance of the children who would normally attend the neighborhood school happened to be white or negro, of Polish, Irish, Scotch, Italian or English descent or otherwise or who espouse one religion or another, does not require a board to attempt to gerrymander the lines, to assign but a certain percentage to a particular school. This would constitute as much discrimination as a gerrymandered line to accomplish the opposite effect."
>
> Bell v. School District No. 6, Town of Babylon, 77 State Dept. Rep. 37 at 38 (1956).

As the Commissioner pointed out in that decision, he was following a long-established policy of non-racial assignment of pupils in the public schools.

Thus, in Matter of Central School District No. 1,

Town of Ramapo, 65 State Dept. Repts., 106, 107, a previous Commissioner held :

> "It is well established that it lies within the power of a Board of Education, when it has more than one school, to establish zones determining the school which a child shall attend. This zoning must be legal and reasonable, and if unreasonable, is subject to readjustment upon appeal to the Commissioner. If the lines are reasonably drawn, the fact that most or all of the school children are of one race or another does not render the zoning illegal."

Also, in Matter of Board of Education of District No. 1, Village of Hempstead, 70 State Dept. Repts. 108, a Commissioner held :

> "Board of Education has legal authority to establish zones for school attendance .... It has heretofore been determined that the fact that most or all the school children are of one race or another within a zone, does not render the zone illegal. In other words, Boards are not under compulsion to bring about an even distribution of the races within all schools of their Districts.... Moreover, to establish a principle that as soon as a locality has a substantial race concentration, its children must be reassigned to the various other schools in the district and may not be permitted to attend the one close at hand, would be manifestly improper and indefensible."

2. <u>The Abrupt 1963 Adoption by Commissioner Allen of A Racially-Oriented Assignment Policy</u>

On June 14, 1963, the Commissioner of Education of the State of New York (herein the "Commissioner") issued

a directive to all local school administrators. In this directive the Commissioner defined a "racially imbalanced" school as "...one having 50 per cent or more negro pupils enrolled" and stated that

> "...there must be corrective action in each community where such imbalance exists".

The Directive further stated that racial "imbalance" in the schools

> "...must...be eliminated from the schools of New York State."

The Commissioner's directive further stated that "...it is the responsibility of local school authorities in such communities to develop and implement the necessary plans". The directive went on to direct that each school district submit a report "...indicating the situation in your district with regard to any problem of racial imbalance", as well as the plans of each district for future action regarding the "imbalance".

Although it has not yet been revealed how the Commissioner arrived at the fifty percent quota for determining racial "balance", he concedes that in November, 1961, he caused to be made a racial census, showing every district in New York State where racial "imbalance" existed.

A copy of such directive is attached to the supporting affidavit of Mason L. Hampton, Jr., marked Exhibit "C".

One can only speculate as to the political, career-advancement or other considerations which caused the Commissioner to make this abrupt reversal in his prior course of non-racial assignment. Perhaps, upon the trial of this action, he will be good enough to tell this Court (a) the factors in his reversal and (b) his method of arriving at a 50% quota.

3. The Present Controversy

Union Free School District No. 12 contains three elementary schools : The Woodfield Road School (91 % Negro), Lindner Place School (21 % Negro) and the Davison Avenue School (18 % Negro). Each of these schools presently accomodates grades Kindergarten through five. On a district-wide basis, the elementary grades within the district are now between 42% and 51% Negro.

(a) The NAACP as Instigator, Arbiter and Judge

In November, 1962, the Commissioner heard an administrative appeal by certain parents from a decision of the Board of Education of District 12 (herein the "Board")

(A) The gist of this appeal was that the Board had declined to transfer the children of these parents from the Woodfield Road School into other schools (outside of the normal areas of residence and attendance) having a lower percentage of Negro students; and that such children were thereby deprived of equal educational opportunity.

The complainants did not contend, nor was any finding ever made, that their educational opportunity was lacking or unequal in any respect other than that of "racial imbalance". Rather, the essence of their complaint was

> "...that the student body of the Woodfield Road School is composed predominantly of Negro pupils and that the educational opportunities afforded in that school are therefore inferior". (B-1)

Upon receiving the appeal of the complainants (which was prosecuted before the Commissioner by the NAACP[2]), (D) the Commissioner referred the matter to a three-man "advisory committee" for findings of fact. The members of this committee were Kenneth B. Clark, Judah Cahn and John H. Fischer. (B)

Of the three members of this committee, two were and are active as national officials in the NAACP, the party which instigated the proceeding in the first place.

Kenneth B. Clark is active nationally as "social science consultant" to the Legal and Educational Division of the NAACP (Who's Who in America, 1962-1963) and has regularly appeared as a partisan witness for the NAACP in racial "balance" cases. Trial record, Blocker v. Manhasset School Board, 226 F. Supp. 208 (E. D. N.Y. 1964) Page 1693.

Judah Cahn is a vice president of the NAACP (Who's

footnote 2 The National Association for the Advancement of Colored People.

Who in the East, 1961).

The dates of the foregoing references make it clear that at the time the Commissioner referred this matter to the committee, he knew of the partisan affiliations of Messrs. Clark and Cahn.

(b) <u>The Findings of the NAACP-Dominated Committee</u>

The Commissioner's committee found, among other things, that

> "If racial difference were not a fact of life in this community, the attendance areas as defined could be cited as an excellent example of administrative planning. They are of suitable size, as compact as possible, and place the majority of children within convenient walking distance of their schools. There are programs of remedial work and enrichment for the Woodfield Road Pupils at all grade levels". (B-6)
>
> • • •
>
> "The actions of the Board should not be termed arbitrary. In 1961 in response to the community situation the Board transferred students from Woodfield Road to the other two schools. These attempts although helpful have not solved the basic problem which is the existence of a racially imbalanced school". (B-6,7)
>
> • • •
>
> "In our visits to each of the schools we found no evidence of different educational standards.

The quality of teaching appeared comparable. Pupil work was exhibited in the same way and the interest of pupils and teachers in class work was uniformly good". (B-7)

• • •

"Class size at Woodfield Road is slightly lower than at the other schools. There is no overcrowding. With the rooms made available by moving all 6th grades to the central school, extra space will be available for special uses. (B-8)

• • •

"No evidence was found of any deliberate action by the Board to create artificial school zones in an attempt to contain the Negro school population. On the contrary the only change that has been made in long established boundaries resulted in the transfer of Negro pupils from Woodfield Road to the other two schools. Each school has its own character but none could properly be called a poor school in any sense. Although as noted above the Lindner Place school is the newest building and somewhat more pleasing architecturally, the Davison Avenue and Woodfield Road Schools were constructed at about the same time, and are comparable buildings. Each, however, reflects in its enrollment the residential pattern of the neighborhood. This fact has created the racial imbalance in the Woodfield Road School. (B-8,9)

"Your Committee believes that in the entire complaint there is one basic and real issue. Is the Woodfield Road School a racially imbalanced school ? If it is, then it follows that the social psychological and educational problems which are ordinarily found in seg-

> regated or racially imbalanced schools are present in this situation. Your Committee has found that the Woodfield Road School is in fact a racially imbalanced school". (B-9)

The Committee did not make, and did not purport to make, any finding of fact as to whether, in this particular case, any adverse "psychological and educational problems" existed by reason of the so-called imbalance.

The findings of the Committee were confirmed by the Commissioner himself. (A-2,4)

The Committee proposed four alternative plans for the elimination of racial "imbalance" within the school district. The first of these would require that the Board of Education eliminate completely the attendance zones, and

> "(1) Reorganize the attendance areas of the District so that all pupils from kindergarten to grade 3 inclusive, will attend either Davison Avenue or the Lindner Place elementary school; all pupils in grades 4 or 5 will attend the Woodfield Road School". (B)

The Committee concedes that under this proposal, "more pupils than at present will need to cross Ocean Avenue, a main street in the community;" and that children will travel a longer distance to school than they now do. (B)

The Committee did not specifically endorse any

one of its four alternative proposals, nor did it find that any one of such proposals would best serve the overall interests of the pupils within the district. The Committee did state, however, that the proposal quoted above would "***do most to satisfy the current complaints of the petitions". (B)

The Committee also considered and reported on the possibility of establishing a policy of "open enrollment" for the entire elementary system, whereby transfers would not be compulsory, but would be available to children of all races, on a voluntary basis. The Committee opined, however, that this alternative would be disadvantageous, in that

> "Most parents of white pupils would be unlikely to choose the option to transfer to Woodfield Road. Very few parents of Negro pupils ordinarily use an "open enrollment" option".

This observation is extremely accurate. On or about February 23, 1964, the Board of Education made a written offer to every parent in the District, stating that any elementary pupil, of whatever race, could transfer to any elementary school of his choice within the District, on a voluntary basis. From the entire District, only two affirmative responses were received.

By a directive dated June 17, 1963, the Commissioner

directed the Board of Education to adopt the above quoted proposal. (A). The directive of the Commissioner, in six and one-half pages, makes seven express references to racial "balance" or "imbalance". (A). No mention is made of any other "educational" factors.

Although the Commissioner directed the Board of Education to adopt the rezoning plan suggested by his Committee, he conceded that

> "(3) The Board of education has not been arbitrary in establishing or in refusing to change school attendance lines ***;(A); and
> "(4) The educational standards at the Woodfield Road School are not below those of the other two elementary schools". (A)

ARGUMENT

I. THE COMMISSIONER'S RACIAL PLACEMENT PLAN CONSTITUTES A DIRECT REFUSAL TO IMPLEMENT "DESEGREGATION" WITHIN THE PURVIEW OF THE CIVIL RIGHTS ACT OF 1964

In Brown v. Board of Education, 349 U.S. 294 (1955), the Supreme Court of the United States mandated the admission of pupils to public schools

> "... on a racially nondiscriminatory basis with all deliberate speed..."

In setting forth the standards which the District Courts

were to follow, the Court called upon the lower courts

> "... to achieve a system of determining admission to the public schools on a nonracial basis...."

Thus, the Supreme Court has directed the implementation and maintenance of "desegregation".

What, however, is "desegregation" ? This question has been answered by the Civil Rights Act of 1964, Section 401 (a) (42 U.S.C. Sec. 2000 C) (b), which provides as follows :

> Desegregation means the assignment of students to public schools and within such schools without regard to their race, color, religion, or national origin, but "desegregation" shall not mean the assignment of students to public schools in order to overcome racial imbalance.

Thus, if the writer understands plain English, the law is now settled that race may not be a factor in pupil assignment. "Without regard to their race..." means just that.

This principle of constitutional neutrality is not new to the law. It has already been invoked to prevent racial assignments of pupils - in particular, to protect pupils who for racial reasons were prevented from attending their neighborhood schools.

Thus, in Taylor v. New Rochelle, 191 F. Supp. 181,

aff'd. 294 F. 2d 6 (2d. Cir. 1961), cert. den. 368 U.S. 940 (1961), the courts held invalid a pupil assignment system whereby pupils were excluded from their neighborhood schools for racial reasons. The New Rochelle school board's pupil assignment policy, prior to the Brown decision of 1954, was such that, as the Negro population of the district increased, the borders of the Lincoln (Negro) district were extended so as to contain the Negroes within them. Corresponding changes were made in the districting of the "White" areas. In addition to gerrymandering, the Board adopted further deliberate policies to assure that the Lincoln school district remain Negro. Up until 1949, white children in the Lincoln district were allowed to transfer to other elementary schools. The Board had admitted in a 1959 resolution that their transfer policy was unfair and exclusionary. This policy resulted in children who lived in adjoining houses attending different schools solely on the basis of their race. White children living south of the Lincoln school were assigned to Mayflower school, one-half mile to the North of Lincoln. As a result, these white children had to pass Lincoln school in order to reach the school where they were assigned. As a result, the Lincoln school had by 1949 become a 100% Negro

school. These policies and devices were employed in the same manner after the 1954 Brown decision.

Under these circumstances the Court held that segregation existed and stated, at 191 F. Supp. 181,192 :

> "With these principles in mind, I see no basis to draw a distinction, legal or moral, between segregation established by the formality of a dual system of education, as in Brown, and that created by gerrymandering of school district lines and transferring of white children as in the instant case.
>
> * * * * *
>
> "Having created a segregated school, the Constitution imposed upon the Board the duty to end segregation in good faith, and with all deliberate speed. It is patently clear that this obligation has not been fulfilled."

Similarly, in Jackson v. Pasadena, 31 Cal. 606, 382 P. 2d 878 (1963), the Court held invalid a plan whereby a pupil was denied permission to attend his neighborhood school, and was required to attend a more distant school, for racial reasons. The facts in that case are summarized at 31 Cal. 606, 608 :

> "Because of the withdrawal from the Pasa-

dena district of a junior high school which pupils of the Linda Vista area formerly attended, it became necessary to determine which junior high school they would attend in the Pasadena district. The Linda Vista area is in the main closer to Washington than to any other junior high school in the district. Certain residents of Linda Vista became alarmed at the possibility that pupils from that area, none of whom was a Negro, might be required to attend Washington, which has an enrollment predominantly of Negroes and members of other minority groups. They urged defendant Board to assign the Linda Vista pupils to Mc Kinley, which contains a considerably smaller proportion of Negroes, and threatened to seek withdrawal of Linda Vista from the district if this were not done. In July 1961 the board adopted zone boundaries for junior high schools, and, instead of placing the Linda Vista area in the Washington zone, the board arbitrarily gerrymandered the Mc Kinley zone to include that area. This was done for the purpose

of instituting, maintaining, and intensifying racial segregation at Washington, relegating to a single junior high school a substantial proportion of all Negro pupils, and permitting most white pupils to avoid attendance at schools where substantial numbers of Negroes are enrolled. As so established, Washington is a racially segregated school which is inherently inferior to other junior high schools in the district. Plaintiff, who resides in the Washington zone, is required by the Board to attend the Washington school, with the result that he is denied equal opportunity for public school education. Plaintiff's request for a transfer to Eliot, which is convenient for him to attend, was denied by the board."

In Blocker v. Board of Education of Manhasset, 226, F. Supp. 208 (E.D. N.Y. 1964), the school district contained three elementary schools. One hundred per cent of the Negro elementary school children were contained in one school, separate and apart from 99.2% of the district's white children, who attended the two

other schools (226 F. Supp. 208, at 225). Since about 1933, well before the 1954 Brown decision, the school district had contained a substantial number of Negroes in the "Valley" area of the district. Since well before the Brown decision, the district had been so zoned that all Negro pupils attended the Valley school (226 F. Supp. 208, at 211).

Following the decision in Brown, the school board continued to assign all Negro pupils the Valley School. Notwithstanding the board's own resolutions (226 F. Supp. 208, at 214, 215) that something must be done, the board persisted in a rigid no-transfer policy (226 F. Supp. 208, at 226). On the basis of these factors, coupled with a showing of great economic disparity between the "White" and the "Negro" sections of the school district, the court found that segregation was being practiced. In so doing, it pointed out (226 F. Supp. 208, at 230) that

> "The court does not hold that the neighborhood school policy per se is unconstitutional; it does hold that this policy is not immutable. It does not hold that racial imbalance and segregation are synonymous or that racial imbalance, not tantamount to segregation, is violative of the Constitution. It does hold that, by maintaining and perpetuating a segregated school system, the defendant Board has

> transgressed the prohibitions of the Equal Protection Clause of the Fourteenth Amendment. The Court does not hold that the Constitution requires a compulsive distribution of school children on the basis of race in order to achieve a proportional representation of white and Negro children in each elementary school within a school district. There is no authority to support this claim of the plaintiffs."

Following the court's decision, the Manhasset Board of Education submitted to the court a plan which would have required closing the Valley School and transferring its pupils to the other two schools. The court declined to order this plan enforced, and held that integration would be achieved if the Board would permit children to transfer from the Valley school to the other two schools, on a voluntary basis. In so holding, the court stated (decree of April 7, 1964, page 11) that

> "It should be clear from the court's opinion that it was not mandating a Princeton Plan or any other type of compulsive distribution. In effect, the court was directing the Board to unlock the gate which confines 100% of the Negro children to the Valley school, and, thereby, separates them from practically all of the white children of the district. The court will not order the Board to close the Valley school as proposed."

The foregoing statement of this Court should be viewed in the light of the fact that, <u>in the present</u>

case, the local Board of Education has offered to allow any elementary school pupil, of whatever race, to transfer to a different elementary school, on a voluntary basis. From the entire school district, only two families sought transfer.

II. THE COMMISSIONER'S RACIAL PLACEMENT PLAN VIOLATES CONSTITUTIONAL REQUIREMENTS OF EQUAL PROTECTION AND DUE PROCESS

The Supreme Court has held that assignments of public school pupils, solely on the basis of their race, amounts to a deprivation of equal protection of the laws.

> Brown v. Board of Education, 347 U.S. 483, 74 S. Ct. 686, 98 L. Ed. 583 (1954).

Similarly, that Court has held that pupil assignment predicated upon racial considerations constitutes an unconstitutional deprivation of due process of law.

> Bolling v. Sharpe, 347 U.S. 497, 74 S. Ct. 693, 98 L. Ed. 591 (1954).

> ["Classifications based solely upon race must be scrutinized with particular care, since they are contrary to our traditions and hence constitutionally suspect."]

See also, Goss v. Board of Education of Knoxville, 373 U.S. 683 at 687, 83 S. Ct. 1405, 10 L. Ed. 2d 632 (1963):

> ["... [W]e note that if the transfer provisions were made available to all students regardless of their race and regardless as well of the racial composition of the school to which they requested transfer, we would have an entirely different case. Pupils could then at their option (or that of their parents) choose entirely free of any imposed racial considerations to remain in the school of their zone, or to transfer to another.

* * *

> "Classifications based on race for purposes of transfer between public schools, as here, violate the Equal Protection clause of the Fourteenth Amendment. As the Court said in [an earlier case]*** 'racial classifications are obviously irrelevant and invidious'''[.

At first glance it may be supposed that the rationale of Brown v. Board of Education depends upon a showing of "inherent inequality" of the segregated facilities furnished. However, subsequent per curiam decisions of the Supreme Court, extending the holding in Brown to facilities which no one is obliged to attend, make one lesson abundantly clear : equal protection and due process require that Americans be allowed to proceed through this life without any impairment of any kind which is predicated upon racial considerations.

New Orleans City Park Improvement Assn. v. Detlege, 358 U.S. 54, affirming per curiam 252 F. 2d 122 (5th Cir. 1958);

Gayle v. Browder, 352 U.S. 903, affirming per curiam 142 F. Supp. 707 (M.D. Ala. 1956)

Holmes v. City of Atlanta, 350 U.S. 879, reversing per curiam 223 F. 2d 93 (5th Cir. 1955);

Mayor & City Council v. Dawson, 350 U.S. 877, affirming per curiam 220 F. 2d 386 (4th Cir. 1955);

Muir v. Louisville Park Theatrical Assn., 347 U.S. 971 (1954), reversing per curiam 202 F. 2d 275 (1954), reversing per curiam 202 F. 2d 275 (6th Cir. 1953).

The whole lesson from these cases is that in America, one may not be accorded a particular treatment, or denied a right or privilege, because of his race, because of the race of his neighbors, or because of the racial composition of his neighborhood. Thus, if pupils are excluded from the schools which they would otherwise attend, and required to attend schools which they would not otherwise attend, the Federal courts will grant relief. This is precisely what was done in Taylor v. New Rochelle, 195 F. Supp. 231 (S.D.N.Y.), aff'd. 294 F. 2d 36 (2d Cir.), cert. den. 368 U.S. 940 (1961). There the District Court succintly stated the proper rule:

> "An individual cannot be deprived of the enjoyment of a constitutional right, because some governmental organ may believe that it is better for him and for others that he not have this particular enjoyment. The judgment as to that and the effects upon himself therefrom are matters for his own responsibility." [citing Dove v. Parham, 282 F. 2d 256, 258 (8th Cir. 1960)].

III. THE PRESENT CASE IS A PROPER ONE FOR INJUNCTIVE RELIEF

Simply stated, injunctive relief is proper when the applicant therefor

(a) Has a meritorious legal position; and

(b) Stands to suffer irreparable harm if injunctive relief is not granted.

Webb v. Board of Education of Chicago, 223 F. Supp. 466 (N.D. Ill. 1963)

From the authorities cited under points I and II, above, it is clear that persons who are subjected to racial assignment and exclusion have a merittorious cause for complaint.

As the Supreme Court of the United States pointed out in Brown v. Board of Education, 347 U.S. 438 at 452, assignment of pupils on the basis of racial factors will "... affect their hearts and minds in a way unlikely ever to be undone."

Since there are no inherent differences between Negro children and White children, it is obvious that the racial assignment of White children will result in the same irreparable injury.

CONCLUSION

THE WITHIN MOTION FOR AN
INJUNCTION SHOULD BE GRANTED

Dated: November 29, 1965

Respectfully submitted,

GAYLOR, HAMPTON & HEIMETH
Attorneys for Plaintiff
Office & P. O. Address
393 Sunrise Highway
Lynbrook, New York

516 LY 3-6500

Mason L. Hampton, Jr.,

of Counsel

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- x

WAYNE OLSON, a minor, by ARTHUR OLSON, his parent and next friend,

Plaintiff,

CIVIL ACTION
NO. 65 C 1170

-against-

THE BOARD OF EDUCATION OF UNION FREE SCHOOL DISTRICT NO. 12, et al,

Defendants.

- x

STATE OF NEW YORK)
)SS.:
COUNTY OF NASSAU)

EDWARD F. NASIEROWSKI, being duly sworn, deposes and says:

1. I am a former member of the defendant, Board of Education, in the within action. I make this affidavit in support of the within motion for a preliminary injunction.

2. Recently, I resigned my position as a member of the Board of Education. I did this as a matter of principle, because I could not in good conscience be a party to any system in which race is the sole factor in determining pupil placement.

3. Union Free School District No. 12 contains three elementary schools: The Davison Avenue School, The Lindner Place School and the Woodfield Road School. Each of these schools now accomodate grades Kindergarten through five. For many years, each of these schools has served the respective neighborhoods in which they are located. Assignments of pupils to these schools have for many years been made without reference to the race, color, creed or national origin of the pupils.

4. During the past ten years or so, the communities served by Union Free School District No. 12 have undergone a population change, with the result that the Woodfield Road School is now predominantly Negro. The present racial makeup of each elementary school in the District is approximately as follows:

PERCENTAGES OF NEGROES

	Sept. 1961	Jan. 1965	Sept. 1965
Prekinder	12.4%	17.1%	15%
Kindergar	13.9	18.7	21
Preskindergarten	72.8	86.7	
Grade 1	51.9	43.4	91
2nd	7	37.2	51
3rd-12	9	27.2	40
Elementary-wide	7	37.9	44.2
1-6 grade, Rel	14.9	46.5	50.6

On a district-wide basis, grades Kindergarten through five are now about 48% Negro, and grades 1-5 are 50% or more.

3. On or about February 23, 1964, the Board of Education sent a written communication to every parent in the School District. A copy of such communication is attached hereto as Exhibit "D" By this communication, the Board offered every child in the district an opportunity to select the neighborhood school which he preferred to attend. Also attached as part of Exhibit "D" is a copy of the Board's minutes authorizing such communication.

Only two families within the District made an affirmative response to this communication.

4. About six months ago, the United States Commissioner of Education sent to our Board of Education an excerpt from his General Statement of Policies Under Title VI of the Civil Rights Act of 1964. A copy of such excerpt is attached hereto as Exhibit "E" .

WHEREFORE, your deponent respectfully prays that the within motion for a preliminary injunction be granted.

S/

Sworn to before me this
30th day of November, 1965.

S/

MASON D. HAMPTON, JR.
Notary Public, State of New York
No. 30-1655725
Qualified in Nassau County
Commission Expires March 30, 1967

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

WAYNE OLSON, a Minor, by ARTHUR OLSON, his Parent and Next Friend, Plaintiff, -against- THE BOARD OF EDUCATION OF UNION FREE SCHOOL DISTRICT NO. 12, et al., Defendants	:	CIVIL ACTION NO. 65 C 1170 AFFIDAVIT

STATE OF NEW YORK)
S.S:
COUNTY OF NASSAU)

MASON L. HAMPTON, JR., being duly sworn, deposes and says:

1. I am the attorney for the plaintiff herein. I make this affidavit in support of the within motion for preliminary injunction.

2. On or about June 14, 1963 , the Commissioner of Education of the State of New York sent to every school district in New York State a directive, copy of which is attached hereto and marked Exhibit "C". In such directive, the Commissioner defined a racially "imbalanced" school as "...one having 50% or more negro pupils enrolled, and stated that

> "... there must be corrective action in each community where such imbalance exists..."

WHEREFORE,I respectfully pray that the within motion for a preliminary injunction be granted.

_____

Sworn to before me this
30th day of November, 1965.

_____

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - -

1. Unless restrained by this Court, defendants will perform the acts referred to;

2. Such action by the defendants will result in irreparable injury, loss and damage to the plaintiff, as more particularly appears in the complaint and the affidavits attached hereto; and

3. The issuance of a preliminary injunction herein will not cause undue inconvenience or loss to defendants but will prevent irreparable injury to plaintiff.

Dated: November 30, 1965

Yours, etc.,

GAYLOR, HAMPTON & WEINETH
Attorneys for Plaintiffs
Office & P. O. Address
393 Sunrise Highway
Lynbrook, New York

TO: JAMES E. ALLEN, JR., Defendant
LUIS BENABANO, Defendant
FRED HOOK, Defendant
THOMAS HANRAHAN, Defendant
Paul A. Stone, Defendant
WILLIAM H. MOODY, Defendant

1 per Bd Member

Mr. Moody

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------x

WAYNE OLSON, a minor, by ARTHUR OLSON, his parent and next friend,

Plaintiff,

-against-

THE BOARD OF EDUCATION OF UNION FREE SCHOOL DISTRICT NO. 12, MALVERNE, NEW YORK; LUIS BEJARNO, President, Board of Education of Union Free School District No. 12, Malverne, New York; LUIS BEJARNO, FRED HOOK, THOMAS HANRAHAN, PAUL A. STONE and WILLIAM H. MOODY, Members of the Board of Education of Union Free School District No. 12, Malverne, New York; and JAMES E. ALLEN, JR., Commissioner of Education of the State of New York,

Defendants.

65-C-1170

February 11, 1966

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Appearances:

GAYLOR, HAMPTON & NELMETH, ESQS.
Attorneys for Plaintiff
MASON L. HAMPTON, JR., ESQ.
Of Counsel

JOSEPH E. McMAHON, ESQ.
Attorney for Defendants, Members of Board of Education, individually, and Board of Education

JOHN P. JEHU, ESQ.
Attorney for Defendant, James E. Allen, Jr., Commissioner of Education of the State of New York

BARTELS, D. J.

Union Free School District No. 12 lies partially in the Village of Malverne, Lynbrook, Rockville Centre, West Hempstead and the Town of Hempstead and is known as the Malverne School District, which operates a school system containing three neighborhood elementary schools, maintaining classes from kindergarten through the fifth grade, as follows: (1) Woodfield Road School [Woodfield School]; (2) Lindner Place School [Lindner School]; and (3) Davison Avenue School [Davison School]. As a result of the residential pattern of the community, 91% of the students of the Woodfield School, 21% of the students of the Lindner School, and 18% of the students of the Davison School, are Negroes. On a district wide basis, the percentage of Negroes in the elementary grades is between 42% and 51%.

In November of 1962, the parents of certain Negro children appealed to the Commissioner of Education (one of the defendants herein) under the New York State Education Law §310, seeking an order reversing the action of the Board of Education of District 12 [Board] which had declined to transfer their children from the Woodfield School to the

other two schools having a lower percentage of Negro students, claiming that the refusal to do so deprived their children of equal educational opportunities because of the racial imbalance of the schools in the district. The Commissioner referred the matter to a three-man committee (two of whom were members of the N.A.A.C.P.) to visit the district, study the problems involved and make recommendations, which was done. Thereafter oral arguments were held and the Commissioner on June 17, 1963, made his determination in the appeal, accepting one of the Committee's proposals, which in effect ordered the Board to abandon the three neighborhood elementary attendance zones and to replace them by (a) substituting two attendance zones for grades kindergarten through 3, by dividing the district into two approximately equal zones for attendance of all K-3 pupils in either one or the other of the remaining two schools, depending on relative proximity of the student to either one or the other of these two schools; and (b) substituting a single attendance zone for grades 4 and 5, consisting of the entire district--so that all students of grades 4 and 5 (as all students of grades 6-12 already were doing) would attend in one place, i.e., the Woodfield School (which then had had

the 74% Negro attendance). 1/

The Commissioner's three-man committee found, among other things, that "If racial difference were not a fact of life in this community, the attendance areas as defined could be cited as an excellent example of administrative planning" and also that "Your Committee believes that in the entire complaint there is one basic and real issue. Is the Woodfield Road School a racially imbalanced school? If it is, then it follows that the social psychological and educational problems which are ordinarily found in segregated or racially imbalanced schools are present in this situation. Your Committee has found that the Woodfield Road School is in fact a racially imbalanced school". In his order the Commissioner found, among other things, that racial imbalance existed in the Woodfield School but that the educational standards at that school were not below those of the other two elementary schools and that the Board had not been

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1/ None of the elementary students live two miles or more from any of the three schools, so that no transportation by bus was mandated by the decision. See, New York State Education Law §3635.

arbitrary in establishing or refusing to change school attendance lines.[2/]

Proceedings were then instituted in the Supreme Court of the State of New York, Albany County, under Article 78 of the Civil Practice Law and Rules [C.P.L.R.], seeking to annul the Commissioner's decisions, entitled: Vetere v. Allen and Hummel v. Allen. Upon appeal from the judgment

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2/ In a statement dated June 14, 1963 to the local school administrators and presidents of the Boards of Education on the subject of racial imbalance in schools, the Commissioner referring to a statement of the Board of Regents of the State Education Department, made the following observations:

"The Regents' statement goes on to point out that modern psychological and sociological knowledge seems to indicate that in schools in which the enrollment is largely from a minority group of homogeneous, ethnic origin, the personality of these minority group children may be damaged. There is a decrease in motivation and thus an impairment of ability to learn. Public education in such a situation is socially unrealistic, blocking the attainment of the goals of democratic education, and wasteful of manpower and talent, whether the situation occurs by law or by fact.

* * * * *

"The position of the Department, based on the policy of the Regents, and the principles of the Commissioner's Advisory Committee, is that the racial imbalance existing in a school in which the enrollment is wholly or predominantly Negro interferes with the achievement of equality of educational opportunity and must therefore be eliminated from the schools of New York State."

of the Special Term annulling, in part, the Commissioner's determination,[3] the Appellate Division reversed this decision[4] and the Court of Appeals affirmed the determination of the Appellate Division with a per curiam opinion, to which there were two dissents.[5] Thereafter, on October 11, 1965, the United States Supreme Court denied a writ of certiorari.[6] Against this background, it is evident that all State administrative and judicial remedies have been exhausted.[7]

In this particular case a parent of another student attending the fifth grade of the Lindner School, institutes this action pursuant to Rule 17(c), Fed.Rules Civ.Proc., 28

3/ Vetere v. Allen, Sup.Ct., Albany County, 1963, 41 Misc.2d 200, 245 N.Y.S.2d 682.

4/ Vetere v. Allen, App.Div.3rd Dep't 1964, 21 A.D.2d 561, 251 N.Y.S.2d 480.

5/ Vetere v. Allen, 1965, 15 N.Y.2d 259, 258 N.Y.S.2d 77.

6/ Allen v. Hummel, 34 U.S. Law Week 3113, 3118 (Oct. 12, 1965).

7/ Cf., Fuller v. Volk, 3 Cir.1965, 351 F.2d 323, vacating Fuller v. Volk, D.C.N.J.1964, 230 F.Supp. 25.

U.S.C.A., and under 42 U.S.C.A. §§1981, 1983, and 28 U.S.C.A. §1343(3), upon the ground that the action of the Commissioner violates the plaintiff's rights under the Fourteenth Amendment and the Civil Rights Act of 1964 (42 U.S.C.A. §§2000c et seq.), seeking both a preliminary and a permanent injunction to restrain the defendants from enforcing the directive of the Commissioner to reorganize the attendance areas of Union Free School District No. 12, Malverne, New York, as above proposed. Plaintiff moves for a preliminary injunction under Rule 65(b), Fed.Rules Civ.Proc., 28 U.S.C.A., and the defendants cross-move to dismiss the complaint under Rule 12(b)(6), Fed.Rules Civ.Proc., 28 U.S.C.A., or in the alternative, for a summary judgment under Rule 56, Fed.Rules Civ.Proc., 28 U.S.C.A.

I

Because the defendants' main arguments are predicated upon lack of jurisdiction, failure to state a claim for relief, and res judicata, it is appropriate to consider these contentions at the outset. It is claimed that the complaint does not set forth facts showing (i) any deprivation under color of State law or regulation of any right,

privilege or immunity as required by 28 U.S.C.A. §1343 and 42 U.S.C.A. §§1981,1983, or (ii) irreparable injury, and that the Civil Rights Act of 1964, 42 U.S.C.A. §§2000c et seq., does not, as claimed by plaintiff, invalidate the Commissioner's plan. Defendants further contend that the issue has been foreclosed by the denial of certiorari by the United States Supreme Court in Allen v. Hummel and consequently no substantial Federal question is involved. Moreover, they also assert that the same denial is an indication that the Supreme Court approved the judgment of the New York Court of Appeals and hence the plaintiff is collaterally estopped from raising the same issues in this proceeding.

Under 42 U.S.C.A. §§1981,1983, and 28 U.S.C.A. §1343, this Court is expressly vested with jurisdiction to protect against any infringement of the Federal civil rights by any State law or regulation and this jurisdiction is not defeated by the possibility that the complaint might fail to state a cause of action. That question must be decided after, and not before, the Court assumes jurisdiction. Bell v. Hood, 1946, 327 U.S. 678, 66 S.Ct. 773.

The troublesome question here is whether the decision of the New York Court of Appeals in Vetere is res

judicata. Both the constitutional requirement of full faith and credit and the doctrine of res judicata would bar a subsequent suit in a Federal court instituted by members of a class whose claims both State and Federal, were fully adjudicated in a prior State court action.[8/] Upon analysis the Court is of the opinion that the instant case does not fall within the proscription of these principles.

First, the Vetere suit and the present action are not between the same parties. The suit brought by the plaintiffs in Vetere did not purport to be a class action under Section 195 of the New York Civil Practice Act (now C.P.L.R. §1005) and accordingly would not be so considered

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8/ State court judgments are entitled to the same res judicata effect in Federal courts as in State courts, Oklahoma Packing Co. v. Oklahoma Gas & Electric Co., 1940, 309 U.S. 4, 60 S.Ct. 215; St. John v. Wisconsin Employment Relations Board, 1951, 340 U.S. 411, 71 S.Ct. 375, and this principle is applicable to decisions involving Federal constitutional questions as well as issues of State law. Gart v. Cole, S.D.N.Y.1958, 166 F.Supp. 129, aff'd, 2 Cir.1959, 263 F.2d 244, cert. denied, 359 U.S. 978, 79 S.Ct. 898; Comacho v. Rogers, S.D.N.Y.1961 (three-judge court), 199 F.Supp. 155; Chirillo v. Lehman, S.D.N.Y.1940 (three-judge court), 38 F.Supp. 65, aff'd, 1941, 312 U.S. 662, 61 S.Ct. 741. The habeas corpus res judicata exception has not been extended to suits under the Civil Rights Acts. Compare Fay v. Noia, 1963, 372 U.S. 391, 83 S.Ct. 822, with Rhodes v. Meyer, 8 Cir.1964, 334 F.2d 709, cert. denied, 379 U.S. 915, 85 S.Ct. 263.

by the New York courts[9]; it is now too late for Vetere to be converted into a class action, which would be res judicata against the plaintiffs in this action.[10] This is not a case where an action was brought by "members of a class whose interests are 'indistinguishable' from those of persons involved in a prior suit" since the "circumstances differ"[11]; nor has there been any proof that the plaintiffs were in privity or associated with the petitioners in Vetere. Although a prior decision of the Court of Appeals on the same issues would have great weight under the doctrine of stare decisis, it could not be described as a bar to a subsequent action in either the State or the Federal courts.[12]

9/ Brenner v. Title Guarantee and Trust Co., 1938, 276 N.Y. 230, 11 N.E.2d 890; Grofsick v. DeAngelis, Sup.Ct., Kings County, 1956, 156 N.Y.S.2d 878.

10/ Cf., Realty Equities Corp. of New York v. Gerosa, Sup.Ct., New York County, 1960, 30 Misc.2d 481, 209 N.Y.S.2d 446.

11/ Steinberg v. Donovan, Sup.Ct., Queens County, 1965, 45 Misc.2d 432, 433, 257 N.Y.S.2d 306, 307.

12/ Foy v. Schechter, 1956, 1 N.Y.2d 604, 154 N.Y.S.2d 927. But see Cuccia v. Bragdon, Sup.Ct., New York County, 1958, 14 Misc.2d 177, 178 N.Y.S.2d 985, aff'd, App.Div.1st Dep't 1958, 179 N.Y.S.2d 842; Roche v. Wagner, Sup.Ct., New York County, 1962, 34 Misc.2d 920, 229 N.Y.S.2d 594, aff'd, App.Div.1st Dep't, 18 A.D.2d 647, 235 N.Y.S.2d 325, aff'd, 12 N.Y.2d 314, 239 N.Y.S.2d 537; Israel v. Wood Dolson Co., 1956, 1 N.Y.2d 116, 151 N.Y.S.2d 1, and other New York cases which seem to expand traditional concepts of res judicata and collateral estoppel.

Second, despite the assertion by the petitioners and the mention by the dissenting judges in Vetere of the constitutional issue[13/], the fact remains that the majority opinion neither discussed nor purported to decide this issue but, instead, determined that the powers of the Commissioner were all but absolute, that his administrative action under the New York State Education Law was not arbitrary or illegal and that any disagreement with his conduct could "only

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13/ In abstention cases, a litigant is entitled to a federal court adjudication of his federal constitutional rights if he has not clearly submitted these issues to the State courts for decision. England v. Louisiana State Board of Medical Examiners, 1964, 375 U.S. 411, 84 S.Ct. 461. A litigant has been allowed to return to the federal court even though he sought unsuccessfully to have the State court decision reviewed by the Supreme Court on certiorari. Tribune Review Publishing Co. v. Thomas, D.C.Pa.1957, 153 F.Supp. 486, aff'd, 3 Cir., 254 F.2d 883. Assuming the application of this principle to this case, there is a question as to whether the petitioners in Vetere clearly intended to submit their federal constitutional claims to a State tribunal.

be heard in the Legislature"[14]. In view of these grounds, it can reasonably be said that the court in Vetere had not "directly reached the federal constitutional question of an alleged denial of petitioner's rights under the Equal Protection Clause of the Fourteenth Amendment" and accordingly that decision has "no relation to our decision here".[15]

Since the parties are not the same in Vetere and since there is uncertainty as to whether the Court of Appeals reached the constitutional question, the bar of res judicata is here surrounded by a substantial doubt.[16] It is pertinent

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14/ Vetere v. Allen, 1965, 15 N.Y.2d 259,267, 258 N.Y.S.2d 77,80, cert. denied, 34 U.S. Law Week 3113,3118.

15/ Silver v. Jordan, S.D.Calif.1964 (three-judge court), 241 F.Supp. 576, aff'd, 1965, 381 U.S. 415, 86 S.Ct. 415; See, also, Lisco v. McNichols,D.C.Colo. 1962 (three-judge court), 208 F.Supp. 471, aff'd, 1964, sub. nom. Lucas v. Forty-Fourth General Assembly of Colo., 377 U.S. 713, 84 S.Ct. 1459; Bell v. School Board of Powhattan County, Va., 4 Cir.1963, 321 F.2d 494. But see, Lehigh Valley R.Co. of N.J. v. Martin, 3 Cir.1938, 100 F.2d 139, cert. denied, 1939, 306 U.S. 651, 59 S.Ct. 592, and American Surety Co. v. Bethlehem, 1941, 287 U.S. 15, 53 S.Ct. 71, where res judicata was applied to constitutional issues which could have been raised.

16/ But see, Morton Salt Co. v. City of South Hutchinson, 10 Cir.1947, 159 F.2d 897; Restatement, Judgments, §93 (1942).

to add in this connection that the plaintiff here also seeks relief under the Civil Rights Act of 1964, 42 U.S.C.A. §§2000c et seq., which had not been enacted[17] at the time of the trial court's decision in Vetere. The Court must, therefore, face the responsibility of considering the substantive merits of the present controversy.[18]

This conclusion is not altered by the Supreme Court's denial of certiorari in Vetere inasmuch as that court has often warned the Bench and the Bar that such action cannot be considered as an expression of opinion upon the merits of any of the issues involved.[19]

17/ Cf., Gart v. Cole, supra.

18/ Compare White v. Howard, 1954, 347 U.S. 931, 74 S.Ct. 529, rehearing denied, 347 U.S. 931, 74 S.Ct. 529, in which the Supreme Court cryptically vacated a judgment based "upon considerations of public policy to which the doctrine of res judicata should yield." Howard v. Ladner, S.D.Miss.1953 (three-judge court), 116 F.Supp. 783, 793.

19/ Hamilton-Brown Shoe Co. v. Wolf Bros. & Co., 1915, 240 U.S. 251, 36 S.Ct. 269; State of Maryland v. Baltimore Radio Show, 1950, 338 U.S. 912, 70 S.Ct. 252.

II

Plaintiff's assertion that Section 401-a of the Civil Rights Act of 1964, 42 U.S.C.A. §2000c(b), constitutes a prohibition against any plan to correct racial imbalance is without merit. The definition of the word "desegregation" in that section relates to the administration of the government aid program in the desegregation of public schools. It has no relevance to the legality or the constitutionality of such a plan. 20/

Plaintiff's real grievance is that he is deprived of both the equal protection of the law and due process in violation of the Fourteenth Amendment by the Commissioner's directive because it excludes him from his neighborhood school and compels him to attend a more distant, non-neighborhood school solely because of his race. He attacks the reason for the directive as being grounded upon the Commissioner's report of June 14, 1963, which, among other

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20/ See, Addabbo v. Donovan, App.Div.2d Dep't,1965, 22 A.D.2d 383, 256 N.Y.S.2d 178, aff'd, 16 N.Y.2d 619, 261 N.Y.S.2d 68, cert. denied, November 8, 1965, 34 U.S. Law Week 3159, 3160.

things, proclaimed: "At this time and for the purpose of this report, a racially imbalanced school is defined as one having 50 per cent or more Negro pupils enrolled." (emphasis in original) and asserts that the Commissioner's conclusion that such imbalance, ipso facto, produces inherently inferior educational opportunities is based upon race alone and without any factual basis and hence is arbitrary. If this is true, then the Commissioner's action is discriminatory and in violation of both Section 3201 of the New York State Education Law and the Fourteenth Amendment.

The issue then is whether racial imbalance in public schools, per se, under certain circumstances creates unequal educational opportunities for minority groups and if so, may it be corrected without infringing the constitutional rights of others. This is not necessarily the same question as the effect of defacto segregation upon such opportunities inasmuch as the latter depends upon a greater percentage of racial imbalance.

In Brown v. Board of Education of Topeka, 1954, 347 U.S. 483, 74 S.Ct. 686, the Court struck down schools which were compulsorily segregated by law, holding that the separation of children in schools "solely because of their race

generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone." (p. 494) It did not decide that the same emotional and mental condition also resulted when the segregation was not compulsory but arose from the residential pattern of the neighborhood, nor did it decide that there must be coerced integration of the races in order to accomplish educational equality for this also would require an appraisal of the effect upon the hearts and minds of those who were so coerced.

We begin with the postulates that there is no constitutional mandate to mix the races in order to remedy racial imbalance for educational purposes, 21/ nor any such mandate precluding such mixing or in effect requiring school

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21/ Bell v. School City of Gary, Indiana, 7 Cir.1963, 324 F.2d 209, cert. denied, 1964, 377 U.S. 924, 84 S.Ct. 1223; Downs v. Board of Education of Kansas City, Kansas, 10 Cir.1964, 336 F.2d 988, cert. denied, 1965, 380 U.S. 914, 85 S.Ct. 898.

authorities to maintain neighborhood schools.[22]

In attempting to formulate a plan which will provide equal educational opportunities to a minority group, it is elementary that the plan should not at the same time deprive the majority group of its constitutional rights. "The constitutional rights of one class of citizenry may not be sacrificed or suppressed in order to vindicate or render more secure the constitutional rights of another class."[23] This principle was clarified in Springfield School Committee v. Barksdale, 1 Cir.1965, 348 F.2d 261, where the court said: " * * * when the goal is to equalize educational opportunity for all students, it would be no better to consider the Negro's special interests exclusively than it would be to disregard them completely." (p. 264)

22/ See, Springfield School Committee v. Barksdale, 1 Cir. 1965, 348 F.2d 261; Dowell v. School Board of Oklahoma, W.D.Okla.1965, 244 F.Supp. 971; Fuller v. Volk, D.C.N.J. 1964, 230 F.Supp. 25, vacated on other grounds, 3 Cir. 1965, 351 F.2d 323; Offermann et al. v. Nitkowski et al., Civil No. 11546, W.D.N.Y., December 9, 1965; Morean v. Board of Education of Montclair, S.C. of N.J.1964, 42 N.J. 237, 200 A.2d 97; Booker v. Board of Education, Plainfield, S.C. of N.J.1965, 45 N.J. 161, 212 A.2d 1; but see, contra, Wanner v. County School Board of Arlington County, Va., E.D.Va.,1965, 245 F.Supp. 132.

23/ Addabbo v. Donovan, supra, p. 390 (concurring opinion).

In redrawing attendance zones for school districts, a number of factors come into play affecting all students, both white and Negro, which must be weighed if the action of the school authorities is not to be classified as arbitrary. "The neighborhood plan is not simply a matter of administrative convenience and cost. In the elementary schools there are problems of transportation which may seem important to individual families, and there is, of course, beyond that the much mooted issue of large scale 'bussing.' Pedestrian crossing of traffic arteries is dangerous for the lower ages. Other values may exist, both for the children and the parents, in having the school close to the home. Correspondingly, the very correction of racial imbalance may have adverse effects upon the educational environment."[24/] The same thought was emphasized in Booker v. Board of Education, Plainfield, supra, where the Court said: "Considerations of safety, convenience, time economy and the other acknowledged virtues of the neighborhood policy must be borne in mind. Costs and other practicalities must be considered and satisfied. And

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24/ Springfield School Committee v. Barksdale, supra, p. 264.

trends towards withdrawal from the school community by members of the majority must be viewed and combatted, for if they are not, the results may be as frustrating as the inaction complained about by the minority." (p. 11)

In pursuing the objective of equal educational opportunities, there must be some correlation between the objective and the means of accomplishing the same, which in this case is the correction of racial imbalance; otherwise the plan itself may frustrate its very purpose. "In a series of decisions this Court has held that, even though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. The breadth of legislative abridgment must be viewed in the light of less drastic means for achieving the same basic purpose."[25/]

Here the charge is that the Commissioner's directive is based solely upon race and has no connection with equal educational opportunities and consequently it is not correlated with his objective. If race has no relevance to

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25/ Shelton v. Tucker, 1960, 364 U.S. 479, 488, 81 S.Ct. 247, 252.

education and it is the only support for the Commissioner's action, it must be condemned.[26] In reaching its decision the Court will limit its consideration, however, to the facts in this particular case, leaving to another day the broader issue as to whether or not 50% of racial imbalance in any school automatically creates educational inequalities.[27] "Broader issues have been urged for our consideration, but we adhere to the principle of deciding constitutional questions only in the context of the particular case before the Court. We have frequently reiterated that this Court will decide constitutional questions only when necessary to the disposition of the case at hand, and that such decisions will be drawn as narrowly as possible."[28]

26/ Goss v. Board of Education of the City of Knoxville, Tennessee, 1963, 373 U.S. 683, 687, 83 S.Ct. 1405, 1408.

27/ This is a rigid and sweeping rule based upon a purely quantitative analysis without a consideration of the facts pertaining to each individual case.

28/ Sweatt v. Painter, 1950, 339 U.S. 629, 631, 70 S.Ct. 848, 849.

It happens to be a fact in the instant case that the educational facilities, instructions and achievement quotas in both the Woodfield and the Lindner Schools are in all respects equal. What then is the basis for the reorganization? On June 14, 1963, the date of the Commissioner's 50% directive, the Woodfield School had 75% Negro students. The Commissioner had prior thereto appointed the committee above described, which studied the conditions in both schools and rendered certain findings and opinions.

Based upon those findings and opinions, the Commissioner on June 17, 1963, issued his own opinion[29/] concluding that racial imbalance in the Woodfield School "constitutes a deprivation of equality of educational opportunity envisioned under the Education Law of New York State for the pupils compelled to attend that school". He predicated his conclusion chiefly upon "modern psychological

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29/ In the Matter of the Appeal of Patricia Ann Mitchell, et al. against the Board of Education of Union Free School District No. 12 of the Town of Hempstead, Nassau County.

and sociological knowledge" as mentioned in the Regents' Statement and he relied upon the comments of the advisory committee 30/ in adopting the committee's proposal No. 1. It thus appears that the Commissioner's determination is based solely upon such "modern psychological and sociological knowledge" without specifying how such knowledge was obtained. Other experts in the field of public education are also of the same opinion that racial imbalance in schools constitutes

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30/ Some excerpts are as follows:

"In contemporary America, race or color is unfortunately associated with status distinctions among groups of human beings. The public schools reflect this larger social fact in that the proportion of Negroes and whites in a given school is often associated with the status of the school. The educational quality and performance to be expected from that school are frequently expressed in terms of the racial complexion and general status assigned to the school. It is well recognized that in most cases a school enrolling a large proportion of Negro students is viewed as a lower status school. It is also true, of course, that an all white school enrolling a substantial proportion of children from culturally deprived homes is frequently considered less desirable.

"A cardinal principle, therefore, in the effective desegregation of a public school system is that all of the schools which comprises that system should have an equitable distribution of the various ethnic and cultural groups in the municipality or the school district. Where serious imbalance exists the school with the highest proportion of minority group and lower-status children tends to receive more such children as parents who are able to do so move to neighborhoods and schools of high status."

a denial to Negro children of equal educational opportunities and at the same time is harmful to all children, both white and non-white,[31] although there are opinions which question and differ with this postulate.[32] In fact, the Commissioner himself in 1956 was of the opinion that it was unnecessary to correct an imbalance of 80% Negro children in order to provide equal educational opportunities.[33]

31/ See, e.g., Report of the Advisory Committee on Racial Imbalance and Education, Massachusetts State Board of Education, April,1965, and authorities cited in Fiss, Racial Imbalance in the Public Schools: The Constitutional Concepts, 78 Harv.L.Rev. 564,568, n. 2 (January, 1965).

32/ See, e.g., Conant, James Bryant, Slums and Suburbs (1961), pp. 27-29; Julia Vane (Hofstra University), Relation of Early School Achievement to High School Achievement When Race, Intelligence and Socioeconomic Factors are Equated, and also, Oscar Handlin, Fire-Bell in the Night (1964).

33/ Matter of the Appeal of Bell, 77 State Dep't Reports 37 (1956). In the same case Commissioner Allen made the following statement: "Because of the incidence of location, the mere fact that the preponderance of the children who would normally attend the neighborhood school happened to be white or Negro, of Polish, Irish, Scotch, Swedish, Italian or English descent or otherwise or who espouse one religion or another, does not require a board to attempt to gerrymander the lines, to assign but a certain percentage to a particular school. This would constitute as much discrimination as a gerrymandered line to accomplish the opposite effect." (Emphasis supplied)

What amount of and when racial imbalance causes the alleged inadequacies in educational opportunities may defy objective measurement, 34/ but common sense indicates that performances in the comparative schools cannot be completely ignored in reaching any such evaluation. It is the Commissioner's position that this factor has been weighed in the reorganization of attendance zones. Under the vast grant of power bestowed upon the Commissioner of Education by the Legislature, the authority of the New York courts to review his ruling is limited to whether the same is arbitrary, capricious, or unreasonable and does not extend to an examination of whether or not the ruling was supported by substantial evidence. That the record is barren of anything but opinion evidence is apparently immaterial. This illustrates the extent of the Commissioner's power which has

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34/ For a discussion of some proposed formulas, see Booker v. Board of Education, Plainfield, S.C. of N.J. 1965, 212 A.2d 1, 9-10. See, also, Fiss, Racial Imbalance in the Public Schools: The Constitutional Concepts, supra, p. 579, n. 15.

raised many questions and caused many problems including the present one.[35]

The point to be recognized in a case where all other educational factors are equal, is that the Commissioner's action is based solely on expert opinion. This does not mean that his action is necessarily arbitrary or capricious since an administrative decision may rest upon expert opinion alone.[36] This was the conclusion reached in Vetere[37] where the Court stated: "Disagreement with the sociological, psychological and educational assumptions relied on by the Commissioner cannot be evaluated by this

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35/ No provision exists in the New York statute requiring the Commissioner to hold a quasi-judicial hearing or to receive evidence. Applied to cases like the instant one, such omission raises a serious question of due process. But see, contra, Application of O'Brien, App.Div.3rd Dep't 1957, 3 A.D.2d 321, 160 N.Y.S.2d 754, appeal dismissed, 1958, 4 N.Y.2d 140, 173 N.Y.S.2d 265 (cf., concurring opinion of Judge Van Voorhis), cert. denied, 1959, 361 U.S. 117, 80 S.Ct. 207. Added to this power, Section 310 of the New York State Education Law expressly permits no review of the Commissioner's action. To this provision the courts were compelled to engraft an exception based on "pure arbitrariness". See, Board of Education of City of New York v. Allen, 1959, 6 N.Y.2d 127, 188 N.Y.S.2d 515.

36/ Board of Education of City of New York v. Allen, supra; Haynes v. Federal Trade Commission, 2 Cir.1939, 105 F.2d 988, cert. denied, 308 U.S. 616, 60 S.Ct. 261; Neff v. Federal Trade Commission, 4 Cir.1941, 117 F.2d 495.

37/ Two dissenting judges, however, indicated that the Commissioner's action was both arbitrary and unconstitutional.

court."[38] (Emphasis supplied) While this Court has great respect for the decision of the New York Court of Appeals in reviewing the Commissioner's administrative conduct in carrying out the educational policies of New York State, it is not bound thereby in the determination of whether such conduct violates the constitutional rights of others. The test for arbitrariness in relation to the educational policies of New York is not necessarily the same as the test for arbitrariness in determining whether there has been a violation of the Fourteenth Amendment. "The finality rule does not, of course, extend so far as to allow the Commissioner to authorize or condone a violation of the State or Federal Constitutions."[39] Administrative agencies, being creatures of State legislatures, are, however, presumed to act within

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38/ Vetere v. Allen, supra, p. 267. See, Professor Edmond Cahn, Jurisprudence, 30 N.Y.U.L.Rev. 150,157 (January, 1955), questioning the Commissioner's right to rest his decision "on any such flimsy foundation as some of the scientific demonstrations in these records". This observation becomes peculiarly relevant when two of the three members of an advisory committee are also members of the N.A.A.C.P.

39/ Application of Ross, App.Div.3rd Dep't 1954, 284 App. Div. 522,530, 132 N.Y.S.2d 760, reversed on other grounds, 1955, 308 N.Y. 605, 127 N.E.2d 697.

their constitutional power.[40] The Court has no right to inject itself in the supervision of State schools unless there is a clear disregard of plaintiff's constitutional rights since "* * * any interference on the part of Federal authority with the management of such schools cannot be justified except in the case of a clear and unmistakable disregard of rights secured by the supreme law of the land."[41]

III

Inasmuch as the Commissioner's determination is supported by the opinions of a committee and by other expert opinion, the Court is not in a position to say that his action is constitutionally arbitrary. Whether the Court agrees with the Commissioner's action is irrelevant.[42]

40/ "State legislatures are presumed to have acted within their constitutional power despite the fact that, in practice, their laws result in some inequality. A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it." McGowan v. State of Maryland, 1961, 366 U.S. 420, 425-426, 81 S.Ct. 1101, 1105.

41/ Cumming v. County Board of Education, 1899, 175 U.S. 528, 545, 20 S.Ct. 197, 201.

42/ See, e.g., Safeway Stores, Inc. v. Okl. Retail Grocers Ass'n, 1959, 360 U.S. 334, 79 S.Ct. 1196, where it was stated that "this Court will not interpose its own economic views or guesses when the State has made its choice. * * * We are not concerned with the soundness of the distinctions drawn. It is enough that it is open to Oklahoma to believe them to be valid as the basis of a policy for its people." (pp. 341-342)

the emphasis in this case is not on race but on equal opportunity for minority groups. While classifications based on race alone are "constitutionally suspect" under the Equal Protection Clause, such a classification is not proscribed if it is necessary to the accomplishment of a permissible State policy.[43/] The Commissioner has determined that such classification is necessary to effectuate the State's policy of equal educational opportunities and he has the support of expert opinion and the New York Court of Appeals. Under the circumstances this Court is not justified in interfering with that conclusion.

Today the Woodfield School is 91% Negro. All that is done here is a reorganization of the attendance zones with respect to grades kindergarten through 5 in order to eliminate excessive imbalance. By the Commissioner's action, the plaintiff is not required to attend a school which, under similar circumstances, other students, regardless of race, are not also required to attend. The motivation is not

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43/ McLaughlin v. State of Florida, 1964, 379 U.S. 184, 85 S.Ct. 283.

discrimination but assistance to minority groups in providing equal educational opportunities which, according to the Commissioner, are not otherwise available.

Therefore, it is the Court's opinion that the complaint does not state a cause of action and accordingly must be dismissed and the motion for a preliminary injunction must also be denied.

Settle order within ten (10) days on two (2) days' notice.

John R. Bartels
United States District Judge

SUPREME COURT COUNTY OF ALBANY

IN THE MATTER OF THE APPLICATION

of

PATRICIA ANN MITCHELL, Minor, by her parent and guardian, Burbank Mitchell,

Petitioner,

For an Order under Article 78, Civil Practice Law,

against

HONORABLE JAMES E. ALLEN, as Commissioner of Educational of the State of New York,

Respondent.

NOTICE OF ORDER FOR SETTLEMENT

Index No. 674-66

S I R S:

PLEASE take notice that pursuant to the decision of February 28, 1966, the order in the above-entitled case will be settled on May 20, 1966. Attached hereto is a copy of the proposed order.

Dated: May 11, 1966
New York, New York

Yours etc.,

Robert L. Carter
Lewis M. Steel
Joan Franklin
20 West 40 Street
New York, New York 10018
Attorneys for Petitioner

TO: Charles A. Brind, Esq.
State Education Building
Albany, New York
John P. Jehu, Esq., of Counsel

SUPREME COURT COUNTY OF ALBANY

IN THE MATTER OF THE APPLICATION

of

PATRICIA ANN MITCHELL, Minor, by her parent and guardian, Burbank Mitchell,

Petitioner,

For an Order under Article 78, Civil Practice Law,

against

HONORABLE JAMES E. ALLEN, as Commissioner of Education of the State of New York,

Respondent.

ORDER

Index No. 674-66

PRESENT: Honorable John H. Pennock, Justice

The above-named petitioner, PATRICIA ANN MITCHELL, having moved for an order under Article 78, Civil Practice Law, and said motion having duly come on to be heard,

NOW after having read all the papers in support of and in opposition to the petition and due deliberation having been had, it is

ORDERED that respondent implement his order of the 17th day of June, 1963, in the case of In the Matter of the Appeal of Patricia Ann Mitchell v. The Board of Education of Union Free School District No. 12 of the Town of Hempstead, Nassau County, without further delay.

Signed this day of 1966, at Albany, New York.

Enter

John H. Pennock
Justice, Supreme Court
County of Albany

CERTIFICATE OF SERVICE

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

LEWIS M. STEEL, of lawful age being first duly sworn on his oath, states that he served a copy of the foregoing Notice of Order for Settlement and Order upon Charles A. Brind, Esq., attorney for respondent, State Education Building, Albany, New York, by United States first-class mail, postage prepaid, on this 11th day of May, 1966.

Lewis M. Steel

Sworn to before me this
11th day of May, 1966.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY
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IN THE MATTER OF
THE APPLICATION OF

NOTICEOF PETITION

INDEX NUMBER

PETITIONER,
FOR A JUDGMENT UNDER ARTICLE 78 OF
THE CIVIL PRACTICE LAW AND RULES
TO WITHHOLD FUNDS AS PROVIDED
(FOR ENFORCEMENT OF DIRECTIVES) UNDER
S. 306 OF THE EDUCATION LAW

-against-
COMMISSIONER ALLEN,
RESPONDENT.
----------X

SIRS:

PLEASE TAKE NOTICE, that upon the annexed petition of_____, verified on the _____ day of _____, 1966, and upon (Other supporting papers), an application will be made to a Special Term, Part _____, of this court, to be held at the courthouse thereof, on the _____ day of _____, 1966, at _____ o'clock in the _____noon of that day, or as soon thereafter as counsel can be heard, for a judgment pursuant to CPLR Article 78 to withhold funds as provided (for enforcement of the directions of Commissioner Allen) under S. 306 of the Education Law, and for such other and further relief as may be just, proper and equitable.

PLEASE TAKE FURTHER NOTICE, that an answer and supporting affidavit, if any, shall be served at least five days before the aforesaid date of hearing.

Petitioner designates Albany County as place of trial. The basis of venue is CPLR Article 5 S. 506 (b)2.

Dated, _____, 1966.

Yours, et.
Attorney for Petitioner

TO: James B. Allen, Jr.
Commissioner of Education
State of New York

Matter of Vetere

VAN VOORHIS, J. (dissenting and voting to reverse and reinstate the order of Special Term).

If, as I think, the action by the Commissioner of Education violates the Constitution of the United States and the Constitution and statutes of New York State, it is reviewable in the courts as included in the class of conduct which is legally defined as purely arbitrary (Matter of Ross, etc. v. Wilson, 308 N. Y. 605).

By directing that all pupils from kindergarten through Grade 3 attend the Davidson Avenue or Lindner Place Elementary Schools, and that all pupils in Grades 4 and 5 attend the Woodfield Road School, after adopting the finding of his Advisory Committee that the attendance areas of these schools as defined by the Board of Education could be cited as an excellent example of administrative planning except for racial difference, the Commissioner of Education has made clear that he reversed the ruling of the Board of Education entirely in order to correct or reduce imbalance between the black and white races. The Court is confronted directly with whether racial imbalance in the public schools, however it may be defined, can be overcome by admitting or excluding children from schools on account of their color. The purpose in the Commissioner's ruling is to blend the seventy-five per cent negro children in the Woodfield School with the white children in the other two elementary schools. The concentration of non-white children in the Woodfield School attendance area was not designed to promote racial segregation in the public schools but occurred on account of the geographical grouping of the races.

Section 3201 of the Education Law prevents a person from being excluded from any public school "on account of race, creed, color or national origin." Other statutes and constitutional provisions call for the same result (cf. U. S. Constitution, Fourteenth Amendment, section 1; New York Constitution, Article I, section 11; section 313 of the Education Law; section 40 of the

Civil Rights Law; and section 290 of the Executive Law).

The Supreme Court of the United States has held that negroes cannot be "denied admission to schools attended by white children under laws requiring or permitting segregation according to race" without denying the equal protection of the law (Brown v. Board of Education, 347 U. S. 483, 349 U. S. 294). That principle is contradicted by the holding of the Appellate Division in this case. Where is the line to be drawn between allocating persons by law to schools or other institutions or facilities according to color to promote integration, and doing the same thing in order to promote segregation? Is the underlying principle not the same in either instance? Both depend on racism. If one is legally justifiable, then so is the other. There is no law which says that school children or others may be allocated according to race until there are 50% of each. If that be the guiding principle, it is honored more in the breach than in the observance.

There is an important difference between obliterating the color line by admitting a boy or girl or man or woman to a school, to employment, to a residential location or to a place of public accommodation without regard to color, and allocating people to locations, employments or facilities because of their color. The latter is what the Commissioner of Education has done in this instance. It is one thing to insist that a person should not be excluded by law from a vocation, school, theatre, hotel, restaurant or public conveyance because of color; it is quite another matter and, as it seems to me, doing the reverse, to allocate these advantages according to racial quotas or on some other proportional racial basis.

Racial questions are acute today. They occupy a great deal of public attention. At other times religious issues or questions of national origin have bulked large. Considered as a question of constitutional or statutory law, is there any more justification to billet negroes and caucasians here and there by law, so as to assemble them or keep them apart, than would be the

case, for example, if the Commissioner of Education were to decide to do the same thing with Catholics, Protestants, Jews or any other ethnological or religious group? Could he legally determine, for instance, that there were too many Catholics and not enough Jews in a particular school, or that some Presbyterians, Episcopalians or Swedenborgians should be added to bring their particular cultural leavens? Or, on the effect of inferiority complexes induced by the appearance of status or the lack of it, can similar measures be taken to blend by law the successive waves of immigrants who have come to these shores during the last century or less, each of which has been inclined to look deprecatingly at the next most recent arrival? Could the Commissioner legally alter the school populations on the ground that there were too many of southern European extraction and not enough Celtic in a particular school, and that psychological damage was being done because the latter looked down on their fellow citizens who came more recently from southern Europe and therefore had not achieved the same distinction in America as though they had immigrated earlier in time? National origin and religion are bracketed with racial discrimination in all of these statutes and decisions. The Commissioner of Education seems to have realized this in 1956 (after the United States Supreme Court decided the Brown case) in a determination by him reported in 77 State Department Reports at page 37, and referred to in the opinion of Special Term at pages 45-46 of the record. There, although it was asserted that pupil attendance in one of the schools in an attendance area would be eighty per cent negro, the Commissioner, denying relief, said:

> "Because of the incidence of location, the mere fact that the preponderance of the children who would normally attend the neighborhood school happened to be white or negro, of Polish, Irish, Scotch, Swedish, Italian or English descent or otherwise or who espouse one religion or another, does not require a board to attempt to gerrymander the lines, to assign but a certain percentage to a particular school. This would constitute as much discrimination as a gerrymandered line to accomplish the opposite effect."

This is as true now, it seems to me, as it was when the Commissioner said it in 1956. Nor does it legalize the utilization of race, religion or national origin, as a basis for allocation of students that instead of gerrymandering the district, pupils are transferred from one school to another on the basis of race. It is true that the racial question in this country is today of outstanding importance, and that a great deal of attention and ability is being focused upon its solution. Old and deeply embedded but artificial lines of distinction are being removed; employment, housing and public accommodations as well as schools are being opened to many for whom they were long overdue. But because it is becoming recognized that for many years the negro has been unfairly discriminated against, it does not follow that the balance can legally be redressed by quota systems, or their equivalent, which operate on the basis of distinctions based on race, religion or national origin instead of their negation.

The Supreme Court of the United States held in the Brown case that de jure segregation denies the equal protection of the law in violation of the Fourteenth Amendment to the United States Constitution. It did not relate to de facto segregation, nor hold that educational authorities were obliged or empowered to eliminate racial imbalance by resorting to the racial distinctions which the Brown decision inhibited.

I vote to reverse the order of the Appellate Division and to reinstate the order of the Special Term on the opinion at Special Term and on the dissenting opinion in Matter of Balaban v. Rubin (14 N. Y. 2d 193, 199).

SUPREME COURT : ALBANY COUNTY

IN THE MATTER OF

The Application of MICHAEL VETERE, individually and as the parent and natural guardian of ANITA VETERE, an Infant, and as a Resident and Taxpayer of the County of Nassau, and of Union Free School District No. 12, Town of Hempstead, State of New York,

Petitioner,

For an Order under Article 78 of the Civil Practice Act, to Review the Determinations and Orders of JAMES E. ALLEN, JR., as Commissioner of Education of the State of New York,

Respondent,

Directing the Board of Education of Union Free School District No. 12 of the Town of Hempstead, New York, to Assign Pupils to and Exclude Pupils from, Schools Within the said District on the Basis of their Race.

SUPREME COURT : ALBANY COUNTY

IN THE MATTER OF

The Application under Article 78, CPLR, of LEWIS HUMMEL and HERMAN ABRAMS, Individually and as the Respective Parents and Natural Guardians of SALLY ANN HUMMEL and ELLIOT ABRAMS, Infants, and as Residents and Taxpayers of the County of Nassau, and of Union Free School District No. 12 of the Town of Hempstead, New York,

Petitioners,

-against-

JAMES E. ALLEN, JR., as Commissioner of Education of the State of New York, and the Board of Education of Union Free School District No. 12 of the Town of Hempstead, New York,

Respondents.

(Supreme Court, Special Term, Albany County, September 13, 1963. Finally submitted September 24, 1963. Decided December 31, 1963.)

(Justice Isadore Bookstein, presiding)

Appearances: Messrs. Gaylor & Hampton, of Lynbrook, New York, Attorneys for Petitioners in both proceedings.

Charles A. Brind, Esq. of Albany, N.Y. (John P. Jehu, Elizabeth M. Eastman and George B. Farrington, of Counsel) Attorney for Respondent, James E. Allen, Jr.

Thomas L. Driscoll, Esq. of Brooklyn, New York, Attorney for Respondent, Board of Education of Union Free School District No. 12 of the Town of Hempstead, New York.

Robert L. Carter, Barbara A. Morris and Jawn A. Sandifer, Esqs. of New York City, Attorneys for the National Association for the Advancement of Colored People, as Amicus Curiae.

BOOKSTEIN, J.

In Brown v. Board of Education, 347 U.S. 483, (1954), the United States Supreme Court declared that segregation of races in public schools pursuant to state laws, i.e., de jure segregation, violates the Fourteenth Amendment of the United States Constitution.

More than half a century before that decision, New York State had abolished de jure segregation in the public schools.

Article 11 of Chapter 556 of the Laws of 1894 authorized school districts to establish and maintain separate schools for negro children resident therein but with the same facilities for instruction as the white schools therein, a classic example of de jure segregation, i.e., segregation by law.

Six years later, Chapter 492 of the Laws of 1900 repealed Section 28 of Article 11 of Chapter 556 of the Laws of 1894 and provided that:

> "No person shall be refused admission into or be excluded from any public school in the State of New York on account of race or color."

The 1900 enactment was the forerunner of Section 3201 of the Education Law which provides that:

> "No person shall be refused admission into or be excluded from any public school in the State of New York on account of race, creed, color or national origin."

Thus, for more than sixty years, de jure segregation in the public schools of this state has been barred by law. Education Law, Section 313 (1) and (3) (a), dealing with post-secondary grade educational institutions, declares it to be an unfair practice to exclude or limit or otherwise discriminate against any person seeking admission because of race, religion, creed, color or national origin.

Union Free School District No. 12 of the Town of Hempstead, which appears to be known also as The Malverne-Lakeview School District, State of New York, lies partially within the Villages of Malverne and Lynbrook, and unincorporated areas of the Town of Hempstead. The district contains three elementary schools: Woodfield Road School, Davison Avenue School and Linden Place School.

In accordance with long established practice in this state, where there is more than one elementary school in a school district, attendance areas or zones are laid out by the school board, and pupils are required to attend the school located in their attendance area. The geographical boundaries of these attendance areas are drawn with many factors in mind, such as safety, traffic conditions, proximity to the homes of pupils, etc. They were not drawn in the instant case with a view to producing segregated schools, i.e., schools predominantly for white pupils or schools predominantly for negro pupils. Race, color or creed were not factors in drawing attendance area lines.

The attendance area of the Woodfield Road School has had a substantial increase in negro residents; as a natural consequence, there is a large attendance of negro pupils at that school. The present ratio of negro to white pupils in the Woodfield Road School is 75 percent.

Circumstances have produced what is termed "racial imbalance." The Advisory Committee appointed by respondent Commissioner of Education, (herein called "Commissioner"), declared this to be de facto segregation. It is not claimed to be de jure segregation, or segregation purposely caused by public officers.

Indeed, that committee, in its report to the Commissioner said:

> "If racial differences were not a fact of life in this community, the attendance areas as defined could be cited as an excellent example of administrative planning. They are of suitable size, as compact as possible, and place the majority of children within convenient walking distance of their schools. * * The actions of the Board could not be termed arbitrary. In 1961 in response to the community situation, the Board transferred students from Woodfield Road to the other two schools. This was done to equalize class size and to utilize all buildings most effectively."

Such transfers were not made on any basis of race, color or creed.

However, the Commissioner contended that the situation nevertheless constitutes de facto segregation, and he determined that a "racially imbalanced" school is "one having 50 percent or more negro pupils enrolled."

Thereafter, on application of certain pupils from Woodfield Road School, the Commissioner ordered the respondent, Board of Education, (herein called "Board"), to redraw attendance area lines so as to eliminate "racial imbalance". In effect, he ordered a gerrymandering of the attendance area zones, for the purpose of eliminating "racial imbalance".

The Commissioner's direction to the district's school board was to

> " * * reorganize the attendance areas of the District so that all pupils from the kindergarten to grade 3 inclusive will attend either the Davison Avenue or the Linden Place elementary school; all pupils in grades 4 or 5 will attend the Woodfield Road School."

The Board's plan, following the aforesaid direction, required that 224 pupils from Woodfield Road School, selected on the basis that they are of the negro race, be transferred to the Davison Avenue and Linden Place Schools; 92 pupils from Davison Avenue School, selected on the basis that they are not of the negro race, be transferred to the Woodfield Road School; and 82 pupils from Linden Place School, selected on the basis that they are not of the negro race, be transferred to Woodfield Road School.

At the threshold, petitioners are met with motions to dismiss on the ground that they fail to state a cause of action, and the determination of the Commissioner is final and not subject to judicial review.

Section 310 of the Education Law does preclude judicial review and does render a decision of the Commissioner final in enumerated respects, which are, indeed, the vast majority of matters regulating internal educational details entrusted to administration by the Commissioner. There are, however, some exceptions to the finality of his determinations and the preclusion of judicial review.

As said in Matter of Board of Education v. Allen, 6 A.D. 2d 316, at page 321:

> "It is a common thing for the court to look at the statutory authority and also at what the administrator has done to see whether he has kept within the frame of his powers."

See also Matter of Ross v. Wilson, 308 N.Y. 605; Matter of Fabricius v. Graves, 254 A.D. 19; Matter of Ellis v. Allen, 4 A.D. 2d 343; Matter of Board of Education v. Allen, 32 Misc. 2d 381.

Here petitioners assert that Commissioner's action violates Sections 313 and 3201 of the Education Law, Article 1, Section 11 of the New York

Constitution and Section 1 of the Fourteenth Amendment to the United States Constitution. If so, it is subject to judicial intervention.

The Commissioner's determination in this case is quite at war with his determination rendered in July, 1956, (after the United States Supreme Court decision in the Brown case), and reported in 77 State Department Reports, 37.

There, although it was asserted that pupil attendance in one of the schools in an attendance area would be 80 percent Negro, the Commissioner, denying relief, said:

> "Because of the incidence of location, the mere fact that the preponderance of the children who would normally attend the neighborhood school happened to be white or negro, of Polish, Irish, Scotch, Swedish, Italian or English descent or otherwise or who espouse one religion or another, does not require a board to attempt to gerrymander the lines, to assign but a certain percentage to a particular school. This would constitute as much discrimination as a gerrymandered line to accomplish the opposite effect. The safety of the children, both white and negro is certainly a greater consideration than the claim made by these appellants that because there is a substantial predominance of Negroes in the Northeast School, that this will mitigate against their educational program.
> * *
>
> "I reiterate what has been said by my predecessors in office; there can be no race, creed or national origin discrimination in the public school system. However, upon the facts present in this case as heretofore outlined, no discrimination is shown."

In Taylor v. Board of Education of City School District, 191 F. Supp. 181, (S.D.N.Y. 1961), affirmed 294 Fed. 2d 36 (2d Cir. 1961), the District Court, having found that the Board had gerrymandered district lines for the express purpose of accomplishing segregation and confining negro children to an all-negro populated school, held that its conduct was violative of the constitutional rights of the negro school children under the decision in Brown v. Board of Education, 347 U.S. 483 (1934). In the Taylor case, de facto segregation was no longer de facto but became de jure segregation by deliberate acts of school officials.

The case of Branche v. Hempstead, 204 F. Supp. 150 (E.D.N.Y. 1962) was decided on a question of pleading. It denied the motion of defendant for summary judgment on the ground that the complaint alleged that the segregation complained of was due to state action.

It is true that in that case, the Court, in its opinion, at page 153, said:

> "The educational system that is thus compulsory and publicly afforded must deal with the inadequacy arising from adventitious segregation; it cannot accept and indurate segregation on the ground that it is not coerced or planned but accepted."

In Bell v. School City of Gary, Indiana, 213 F. Supp. 819, (N.D. Indiana, 1963), the District Court held that a school system developed on the neighborhood school plan, honestly and conscientiously constructed with no intention or purpose to segregate races, need not be destroyed or abandoned because a resulting effect is racial imbalance in certain schools by reason of population concentration where districts are populated almost entirely by Negroes or whites, and that racial balance in public schools is not constitutionally mandated. In other words, while the United States Constitution forbids segregation by law in the public schools, it neither forbids racial imbalance nor compels racial balance.

The Bell case is the only one to which my attention has been called or which has been found in independent research, treating with almost the precise situation presented here. Moreover, in that case, there does not appear to have been any Indiana statute similar to Section 3201 of the New York Education Law.

Nor has any decision by the courts of this state on the precise problem posed apparently been made.

The constitution forbids segregation by law in the public schools. It does not, however, prohibit racial imbalance; nor does it mandate racial balance.

Upon these applications, these facts are undisputed; racial imbalance exists in the three neighborhood schools involved; such racial imbalance does not result from law but rather from incidence of residence; and there has been nothing improper in the drawing of lines for attendance zones.

The contention of the Commissioner, however, is that racial imbalance is harmful to education; and for that reason, and that reason alone, he has made the order under attack in these proceedings.

The question here presented is whether the Commissioner has the power to abolish that concept, under the law as it now exists.

Section 3201 is clear and unmistakable. It says "No person shall be refused admission into or be excluded from any public school in the State of New York on account of race, creed, color or national origin."

When a number or percentage of pupils of whatever race, color or creed, normally entitled and indeed required to attend a public school in their attendance zone, are denied admission, and, contrary to their wishes, are directed to attend a school in a different zone in order to eliminate racial imbalance, is this anything other than denial of admission on the ground of race or color, contrary to long established law? Irrespective of whether the pupils be white or Negro it would cetainly seem that admission on such a basis is predicated on race or color. Admission so predicated, even though intended to alter racial imbalance, nontheless wiolates the language of the statute.

This court is constrained to find that Section 3201 of the Education Law precludes the Commissioner from making the determination which he did.

Accordingly, the motions to dismiss the petitions are denied, and the determination of the Commissioner is annulled.

Submit order.

All papers to attorneys for petitioners except briefs.

IRVING SVERDLIK
COUNSELLOR AT LAW
26 BROADWAY
NEW YORK, N. Y. 10004
212 DI 4-4747

LONG ISLAND
15 BUCKINGHAM PLACE
LYNBROOK, N. Y.
516 LY 9-9013

May 20, 1966

Lawrence H. Strear, Esq.
53 North Park Avenue
Rockville Centre, New York

Re: Malverne School District Matter

Dear Larry:

After I phoned you last night and learned that you had not received any of the pertinent legal papers as yet, I phoned Mr. Finley and picked up some of these papers from him, which I have reproduced.

Enclosed please find the following:

1. Order of Com. Allen dated 6/17/63 (Appeal of Mitchell).

2. Order of Com. Allen dated 8/13/63 denying motion by the School Board to reopen his previous decision.

3. Decision dated 7/21/64 of the Appellate Division, New York Supreme Court, 3rd Department, in the Vetere and Hummel cases sustaining the validity of Com. Allen's order. This decision reversed the lower court (Supreme Court) decision of Judge Bookstein of 2/4/64 which annulled Com. Allen's order.

4. Order of Com. Allen dated 1/24/66 further extending the effective date of his original order, (as subsequently extended by reason of litigation from September 1963 to January 31, 1966) from 1/31/66 to not later than 3/1/66.

5. Order to show cause under Article 78 (unconformed) dated 2/66 in New York Supreme Court, Albany County, for an order prohibiting Com. Allen from executing his own order of 1/24/66 and from extending any further similar order.

6. Decision of Judge Pennock, New York Supreme Court, Albany County, 3/1/66 upon application referred to in Item 5 above, holding illegal and unenforceable Com. Allen's extension order of 1/24/66 (Item 4 above) because not based upon educational purpose. Judge Pennock, however, refused to enjoin any further similar extension order, since any such further extension might be valid if for educational purpose.

Please note that the official reference of Com. Allen's 8/13/63 order, which refused to reopen and therefore reaffirmed his original order, is 3 Ed. Dept. Rep. 26.

The enclosed papers do not include the following which may be pertinent and which I am also trying to obtain so that copies can be reproduced and distributed:

1. The original decision 2/4/64 by Judge Bookstein annulling Com. Allen's order.

2. The opinion of the New York Court of Appeals in the Vetere case, 15 NY 2d, 259 wherein the Court of Appeals affirmed the Appellate Division which reversed Judge Bookstein.

3. The recent decision by the United States Supreme Court in the Vetere case denying certiorari.

4. The pleadings in the Olson case. This was the recent case brought in United States District Court for the Eastern District of New York apparently alleging that Com. Allen's order was contrary to the Federal Civil Rights Act and/or the United States Constitution. This was the pending case which prior to decision resulted in the issuance by Com. Allen of his extension order listed in Item 4 above.

5. The decision of Judge Bartels in the Olson case denying the requested relief and apparently dismissing the application to invalidate Com. Allen's order. As appears in Judge Pennock's order (Item 6 above) this decision by Judge Bartels was announced during the very latter part of February 1966.

6. Notice of Appeal and pertinent papers which are said to have been filed in the Circuit Court of Appeals appealing from Judge Bartels order in the Olson case.

7. Order and related papers said to have been obtained apparently based upon Judge Pennock's decision and said to require Com. Allen to act to implement his own original order. This order apparently has been obtained by NAACP. If you receive a copy directly from any of the NAACP attorneys, would you please send me a copy.

Please let me know if I can assist in any aspect.

Best wishes.

Sincerely,

IRVING SVERDLIK

IS:jd
Encs.

ccs: Carl Bender, Esq.)
Mr. Ewell Finley) (With copies of attached exhibits)
Mr. Gordon Rothstein)

[Malverne, L.I., New York, June 17, 1963]

THE UNIVERSITY OF THE STATE OF NEW YORK

THE STATE DEPARTMENT OF EDUCATION

BEFORE THE COMMISSIONER

IN THE MATTER

of the

Appeal of PATRICIA ANN MITCHELL, et al. against the Board of Education of Union Free School District No. 12 of the Town of Hempstead, Nassau County.

Jawn A. Sandifer, Esq.)
Robert L. Carter, Esq.).....Attorney for Petitioners

Thomas L. Driscoll, Esq.....Attorney for Respondent
Frank X. Altimari, Esq. of Counsel

This is an appeal brought by children attending the public schools in Malverne-Lakeview, Long Island, Union Free School District No. 12 of the Town of Hempstead, Nassau County, through their parents and guardians, protesting:

(1) The racial imbalance presently existing in the public school system of the Malverne-Lakeview Union Free School District No. 12.

(2) The present plan of transfer of pupils from all grade 6 classes to the new proposed junior high school addition.

(3) The alleged refusal of the Board of Education to change the present zoning plan.

(4) Failure of the Board of Education to equalize the educational standards at the Woodfield Road School with those of the predominantly white schools.

An oral argument was held by me on November 7, 1962, at which the issues were presented by counsel for the petitioners and by counsel for the Board of Education. Following such argument I requested the Commissioner's Advisory Committee on Human Relations and Community Tensions, a three-member Committee established by me

advise and assist on community problems affecting public education, to conduct a special study of the situation in District 12 and to report their findings and recommendations to me in writing.

The Committee personally visited the district, met with representatives of the petitioners and with representatives of the Board of Education. A report has been made to me, copies of which were furnished the litigants, and a further oral argument has been had by me and further briefs filed.

The facts are these: The Malverne-Lakeview School District is comprised of five schools - a senior high school, a junior high school and three elementary schools - Woodfield Road School, Davison Avenue School and Lindner Place School. There is of course no problem with respect to the senior or junior high school as both schools serve all children of the district. Since this appeal was initiated all sixth grade children have been transferred from the elementary schools to the Junior High School Building.

The record shows that the Woodfield Road School has a Negro to white ratio of approximately 75 per cent and that this ratio is annually increasing. This school is commonly viewed in the community as the "Negro School." Each of the other two elementary schools has a Negro pupil enrollment of approximately 14 per cent.

On the basis of the record before me, including the report of the Advisory Committee, I conclude and determine with respect to each of the petitioners' protests as follows:

(1) Racial imbalance exists in the Woodfield Road School approximately as stated by the petitioners.

(2) The plan adopted by the Board for transferring all grade 6 classes to the Junior High School Building seems reasonable and educationally sound.

(3) The Board of Education has not been arbitrary in establishing or in refusing to change school attendance lines. Although there has been no major revision of attendance lines, recent alterations have placed a number of former Woodfield Road children in the Davison Avenue and Lindner Place Schools.

(4) The educational standards at the Woodfield Road School are not below those of the other two elementary schools. The Advisory Committee reports that- "Many activities have been undertaken by the Board and the Superintendent to raise the quality of education in all schools but more has been done in the Woodfield Road School than in the others."

Having concluded that racial imbalance exists in the Woodfield Road School, the question before me is whether, under the circumstances present in the district, such imbalance constitutes a deprivation of equality of educational opportunity envisioned under the Education Law of New York State for the pupils compelled to attend that school. I find that it does. While the Board's special efforts to improve the quality of teaching in this school are desirable, they do not overcome the disadvantages attached to racial imbalance.

In this regard the general comments and principles enunciated by the Advisory Committee are of interest:

> In contemporary America, race or color is unfortunately associated with status distinctions among groups of human beings. The public schools reflect this larger social fact in that the proportion of Negroes and whites in a given school is often associated with the status of the school. The educational quality and performance to be expected from that school are frequently expressed in terms of the racial complexion and general status assigned to the school. It is well recognized that in most cases a school enrolling a large proportion of Negro students is viewed as a lower status school. It is also true, of course, that an all white school enrolling a substantial proportion of children from culturally deprived homes is frequently considered less desirable.
>
> A cardinal principle, therefore, in the effective desegregation of a public school system is that all of the schools which comprise that system should have an equitable distribution of the various ethnic and cultural groups in the municipality or the school district. Where serious imbalance exists the school with the highest proportion of minority group and lower-status children tends to receive more such children as parents who are able to do so move to neighborhoods and schools of higher status.
>
> A program which seeks an equitable distribution of majority and minority group children in all of the schools of a district offers several advantages. It will enable all children to profit from acquaintance with others of different backgrounds than their own, it will reduce distinctions among schools based on non-educational factors, and will probably stabilize the shifts of enrollment which often follow the arrival of minority group children in disproportionate numbers in a particular school.
>
> The Committee recognizes that long established patterns and community customs are not easily or quickly changed and that psychological and social factors operate on all sides of such a situation as the one now before you. We therefore suggest six principles which seem to us relevant to the whole question of racial balance in the schools.
>
> 1. The common school has long been viewed as a basic social instrument in attaining our traditional American goals of equal opportunity and personal fulfillment. The presence in a single school of children from varied racial, cultural, socio-economic, and religious backgrounds is an important element in the preparation of young people for active participation in the social and political affairs of our democracy.

2. In forming school policies every educationally sound action should be taken to assure not only passive tolerance but active acceptance of and genuine respect for children from every segment of the community, with particular attention given to those from minority groups that may have been the objects of discriminatory mistreatment.

3. No action, direct or indirect, overt or covert, to exclude any child or group of children from a public school because of ethnic, racial, religious, or other educationally irrelevant reasons should be taken by any public agency. Whereever such action has occurred, it is the obligation of the school authorities to correct it as quickly as possible.

4. No action should be taken which implies that any school or any group of pupils is socially inferior or superior to another, or which suggests that schoolmates of one group are to be preferred to schoolmates of another. In establishing school attendance areas one of the objectives should be to create in each school, a student body that will represent as nearly as possible a cross-section of the population of the entire school district, but with due consideration also for other important educational criteria including such practical matters as the distance children must travel from home to school.

5. A "neighborhood school" offers important educational values which should not be overlooked. The relation between a school and a definable community with which it is identified can, in many cases, lead to more effective participation by parents and other citizens in the support and guidance of the school. It can stimulate sound concern for the welfare of the school and its pupils and can lead to beneficial communication between the school staff and the community that staff serves.

6. When a "neighborhood school" becomes improperly exclusive in fact or in spirit, when it is viewed as being reserved for certain community groups, or when its effect is to create or continue a ghetto type situation it does not serve the purposes of democratic education.

For many years the Regents and the State Education Department have fostered and encouraged better understanding and practice in matters affecting the educational opportunities of minority groups. In January 1960, the Regents adopted a statement of policy on "Intercultural Relations in Education" which reads as follows:

> The State of New York has long held the principle that equal educational opportunity for all children, without regard to differences in economic, national, religious or racial background, is a manifestation of the vitality of our American democratic society and is essential to its continuation. This fundamental educational principle has long since been written into Education Law and policy. Subsequent events have repeatedly given it moral reaffirmation. Nevertheless, all citizens have the responsibility to reexamine the schools within their local systems in order to determine whether they conform to this standard so clearly seen to be the right of every child.

The Regents' statement goes on to point out that modern psychological and sociological knowledge seems to indicate that in schools in which the enrollment is largely from a minority group

of homogeneous, ethnic origin, the personality of these minority group children may be damaged. There is a decrease in motivation and thus an impairment of ability to learn. Public education in such a situation is socially unrealistic, blocking the attainment of the goals of democratic education, and wasteful of manpower and talent, whether the situation occurs by law or by fact.

Numerous conferences with local school officials have been held and materials developed and distributed, under the leadership of the State Education Department designed to implement the Regents policy. A racial census of the schools was conducted during the school year 1961-62, and the results of this census were sent to the districts of the State along with suggestions for remedial action in those schools where the ratio of Negroes to whites was relatively high.

In the instant case, the Commissioner's Advisory Committee has offered four proposals for improving the racial balance in the elementary schools of the Malverne-Lakeview District:

> (1) Reorganize the attendance areas of the District so that all pupils from kindergarten to grade 3 inclusive, will attend either the Davison Avenue or the Lindner Place elementary school; all pupils in grades 4 or 5 will attend the Woodfield Road School. All pupils in grades 6 to 12 will, of course, attend the Junior and Senior High School as they do now.
>
> (2) Redraw the attendance lines in an East-West direction with the boundaries roughly parallel to each other.
>
> (3) Establish a policy of "open enrollment" for the entire elementary school system.
>
> (4) Transfer approximately 100 pupils from the Woodfield Road School to the other two elementary schools.

The Committee's proposals apply, of course, only to this district The advantages and disadvantages of each proposal are set forth in their report. They state their opinion that Proposal (1) will do most to satisfy the current complaint of the petitioners.

In its reply memorandum submitted at the second oral argument, the Board rejects all of these proposals and offers no plan of its own to remove the disadvantages of this serious racial imbalance which exists in the Woodfield Road School.

It is my opinion that Proposal (1) is reasonable and can be made to work in the best interests of all the children of the district.

THE APPEAL IS SUSTAINED.

IT IS ORDERED that the Board of Education of Union Free School District No. 12 of the Town of Hempstead, Nassau County, proceed forthwith to prepare a program to make Proposal No. (1) effective on the opening of school this coming September. Such program should be submitted to me not later than August 1. If it should appear that money not already appropriated is needed for capital outlay, in such report the Board shall set forth the necessity and amount thereof.

IN WITNESS WHEREOF, I, James E. Allen, Jr., Commissioner of Education of the State of New York, for and on behalf of the State Education Department, do hereunto set my hand and affix the seal of the State Education Department, at the City of Albany, this 17th day of June 1963.

S E A L

James E. Allen, Jr.

Commissioner of Education

August 13, 1963

THE UNIVERSITY OF THE STATE OF NEW YORK

The State Department of Education

Before the Commissioner

IN THE MATTER

of the

Appeal of PATRICIA ANN MITCHELL, et al. against the Board of Education of Union Free School District No. 12 of the Town of Hempstead, Nassau County.

Frank X. Altimari, Esq. ..... Attorney for Respondent Board of Education

Jawn A. Sandifer, Esq.)
Robert L. Carter, Esq.) ..... Attorneys for Petitioners Respondent

---

Respondent Board of Education moves for the reopening of my decision and order in the above entitled proceeding.

It is stated that the said decision and order was made under misapprehension of the facts and the law in that

"(a) the said decision and order is, and compliance therewith would be, in violation of Section 3201 of the Education Law and the fundamental policy of the State of New York as laid down in the Education Law Sections 3201 and 313;

"(b) the Commissioner of Education was under a misapprehension of fact that the Board of Regents had developed and declared an Educational Policy in the area of unintentional racial imbalance in schools, when in fact it had not done so; and in the absence of which the Commissioner had no administrative power to change the policy theretofore frequently declared by him in such cases as Matter of Bell (77 State Dept. Rep. 37) and others, or to make new Educational Policy or the order complained of herein;

"(c) the attendance areas established by the petitioner-respondent Board of Education having been found to be 'an excellent example of administrative planning' and not the result of any arbitrary or deliberate action of said Board, the Commissioner had no judicial power to alter or modify the action of the Board."

It is also claimed that "there is material evidence in the form of testimony (a transcript of which was submitted with the petition for reopening) of two***members of the Department of Education of the State of New York,***given before the United States District Court for the Eastern District of New York, which was not previously available to petitioner-respondent and would warrant a reopening of the appeal and the dismissal thereof."

It is to be noted by the respondent Board of Education that the proceeding before me was brought under the provisions

of Section 310 of the Education Law under which appeals are brought to the Commissioner of Education from actions of boards of education as therein set forth. In order that a motion for reopening be granted, as has been pointed out in many prior decisions, it is essential that the moving party establish that upon an application to reopen, either, there must be new material evidence, not available at the time of the original proceeding,, which would warrant the reopening of the appeal, or it must be shown that the decision in the original proceeding was rendered under a misapprehension as to the facts. (See Matter of Pace, 65 State Dept. Rep. 104; Matter of Broderick, 69 id. 16; Matter of Carmon, 76 id. 52.) I find nothing new of probative value presented in this application to reopen.

A great deal of care was exercised by me in examining into all of the facts concerning the alleged racial imbalance of school enrollment in Malverne, even to the extent that I appointed a special committee of three competent persons who personally investigated the situation as it exists in this district. As pointed out in that decision, the educational interests of the pupils were adversely affected for the reasons therein set forth and a solution of the problem was needed. While no criticism was made by me of the boundary lines for school attendance established by the Board as such, it was pointed out that they did not solve the problem and that the Board has made no other attempt at such solution. This Board of Education is bound to provide the best educational opportunities it can for all of the children of this district. The record in the appeal case showed that it failed to do this and hence it became necessary for the Commissioner of Education under the judicial power granted him for 140 years to direct the Board to correct the situation.

The Board challenges the jurisdiction of the Commissioner of Education. This is a State system of education and there is nothing more important than the education of the children of the State. The Board of Regents is the head of the State system of education. The Commissioner is granted by law quasi-judicial powers to hear and determine any case where the local board is failing to carry out its duties under the statute. As a matter of fact, it is the duty of the Commissioner to act in such cases. While reference is made to certain opinions by attorneys on the staff of the Education Department, an examination of the same would indicate that their position confirms the judicial powers of the Commissioner of Education to act. The Board of Education has confused the judicial powers of the Commissioner with his administrative powers.

It is interesting to note that the respondent Board of Education at no time in the original proceeding raised any question concerning the judicial power of the Commissioner of Education in this proceeding.

It ought to be added so that there be no misunderstanding that the decision is in complete conformity with the policies of the State Board of Regents calling for an end to de facto segregation through reasonable solutions.

The motion to reopen is denied.

IT IS ORDERED that the Board of Education proceed forthwith to comply immediately with my order dated June 17, 1963, directing this Board to proceed forthwith to prepare a program to make Proposal No. (1) effective on the opening of school this coming September. Such program shoud be submitted to me forthwith. If it should appear that money not already appropriated is needed for capital outlay, in such report the Board shall set forth the necessity and amount thereof.

IN WITNESS WHEREOF, I, James E. Allen, Jr., Commissioner of Education of the State of New York

(SEAL)

for and on behalf of the State Education Department, do hereunto set my hand and affix the seal of the State Education Department, at the City of Albany, this 13th day of August, 1963.

James E. Allen, Jr.
Commissioner of Education.

#6750

STATE OF NEW YORK SUPREME COURT

APPELLATE DIVISION THIRD DEPARTMENT

In the Matter

of

the Application of MICHAEL VETERE, individually and as the Parent and Natural Guardian of ANITA VETERE, an Infant,

Petitioners-Respondents,

For an Order under Article 78 of the Civil Practice Law and Rules

-against-

PATRICIA ANN MITCHELL et al.,

Respondents,

and

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE,

Intervenor-Respondent,

and

JAMES E. ALLEN, JR., as Commissioner of Education of the State of New York,

Respondent-Appellant.

In the Matter

of

the Application of LEWIS HUMMEL and HERMAN ABRAMS, individually and as Parents and Natural Guardians of SALLY ANN HUMMEL and ELLIOT ABRAMS infants,

Petitioners-Respondents,

For an Order under Article 78 of the Civil Practice Law and Rules,

-against-

BOARD OF EDUCATION OF UNION FREE SCHOOL DISTRICT NO. 12 of the Town of Hempstead, New York,

Respondent,

and

JAMES E. ALLEN, JR., as Commissioner of Education of the State of New York,

Respondent-Appellant.

Argued, May 29, 1964

Decided, July 21 1964

6750

BEFORE:

HON. J. CLARENCE HERLIHY,
Justice Presiding,
HON. WALTER B. REYNOLDS,
HON. DONALD S. TAYLOR,
HON. FELIX J. AULISI,
HON. HERBERT D. HAMM,
Associate Justices.

APPEAL from an order and judgment of the Supreme Court at Special Term (Bookstein, J.), entered February 4, 1964, which denied the respondent-appellant's motions to dismiss the petitioners-respondents' petitions and annulled a determination of James E. Allen, Jr., as Commissioner of Education of the State of New York, directing the respondent Board of Education to reorganize attendance areas in the school district.

GAYLOR & HAMPTON (Mason L. Hampton, Jr. of Counsel), Attorneys for Petitioners-Respondents, 393 Sunrise Highway, Lynbrook, New York.

ROBERT L. CARTER, 20 West 40th Street, New York 18, New York, and JANN A. SANDIFER, 271 West 125th Street, New York 27, New York (Joan Franklin of Counsel), Attorneys for Respondents Patricia Ann Mitchell et al. and National Association for the Advancement of Colored People.

THOMAS L. DRISCOLL, Attorney for Respondent Board of Education of Union Free School District No. 12 of the Town of Hempstead, New York, 166 Montague Street, Brooklyn 1, New York.

CHARLES A. BRIND, (John P. Jehu, Elizabeth M. Eastman and George B. Farrington of Counsel), Attorney for Respondent-Appellant, State Education Building, Albany, New York.

OPINION FOR MODIFICATION

#6750

HAMM, J.

This appeal is from an order and judgment which denied the motions of the respondent-appellant Commissioner of Education to dismiss the petitions as insufficient in law and annulled the determination of the Commissioner complained of in the petitions.

The petitioners in both proceedings are parents of white children affected by the Commissioner's decision. The two petitions are substantially similar, the petitioning parents in both proceedings are represented by the same attorneys. The Board of Education of the school district is a party to the second proceeding and has served an answer.

Union Free School District No. 12 of the Town of Hempstead contains a junior high school and a senior high school. After completion of the requirements of the fifth grade all pupils attend the junior high school. The attendance area for the junior high school and for the senior high school is the entire school district. The district contains also three elementary schools: Woodfield Road School, Davison Avenue School and Lindner Place School. As the result of concentration of Negroes in a specific area Woodfield school has a Negro to white ratio of approximately 75%, which is constantly increasing. Each of the other two elementary schools has a Negro pupil enrollment of approximately 14%.

Negro children through their parents appealed to the Commissioner from the refusal of the Board of Education to alter zoning areas for school attendance. An oral argument was held and findings and recommendations were submitted by the Commissioner"s Advisory Committee on Human Relations and Community Tensions. After a special study by the Committee of the situation in the school district a further oral argument was held and briefs were filed. On June 17, 1963, the Commissioner rendered his decision. At considerable length he quoted from and summarized the Committee's report, quoted a portion of and summarized the statement of policy of the Regents on "Intercultural Relations in Education", accepted the first of four proposals submitted by the Committee and ordered the

Board of Education to prepare a program to make the accepted proposal effective on the opening of school in September. We quote the proposal:

> "Reorganize the attendance areas of the District so that all pupils from kindergarten to grade 3 inclusive, will attend either the Davison Avenue or the Lindner Place elementary school; all pupils in grades 4 or 5 will attend the Woodfield Road School. All pupils in grades 6 to 12 will, of course, attend the Junior and Senior High School as they do now."

On August 13, 1963, the Commissioner denied the motion of the Board of Education to reopen his decision and order. As appears from the amended petition of Michael Vetere the Board of Education did in fact adopt, but only partly, the Commissioner's plan and subsequent to the commencement of this proceeding the Commissioner rejected the proposed plan of the Board of Education. So it is the Commissioner's directive which is in issue.

The petitioners rely on Section 3201 of the Education Law, which provides:

> "No person shall be refused admission into or be excluded from any public school in the state of New York on account of race, creed, color or national origin."

The Commissioner required that all pupils in grades four and five should attend the Woodfield school. This is no different than high school pupil's attendance at the junior or senior high schools; the geographical attendance areas for the high schools and the Woodfield school are the same, consisting of the entire school district. The Commissioner's direction to the Board was also to "Reorganize the attendance areas of the District so that all pupils from kindergarten to grade 3 inclusive, will attend either the Davison Avenue or the Lindner Place elementary school". When the attendance zones are so reorganized each pupil will attend the school in his attendance area and no child will be refused admission to any school in his attendance area and accommodating his respective grade. If it be argued that children are refused admission to a school because there are another or other elementary schools in their attendance area although not accomodating their

respective grades, then Section 3201 becomes a segregation statute mandating continuation in schools of racial imbalance and making de jure that which is now merely de facto (Cf. Matter of Balaban v. Rubin, 20 A D 2d 438, 448; aff'd. 14 N Y 2d 193.) Moreover, when attendance zones ultimately are established by the Board for the Davison Avenue and Lindner Place schools, any person then considering the fixation of those boundaries to have been accomplished contrary to proper consideration of the factors necessarily and relevantly involved may appeal to the Commissioner and, if the decision on appeal is unfavorable, can review the Commissioner's decision. We find no violation of Education Law, Section 3201.

As to the allegation that the Commissioner's decision was arbitrary, capricious and unreasonable it has been held that in a proper case efforts may be made to correct racial imbalance (Matter of Balaban v. Rubin, 14 N Y 2d 193 , supra). The court at Special Term summarized the Commissioner's position, saying:

> "Upon these applications, these facts are undisputed; racial imbalance exists in the three neighborhood schools involved; such racial imbalance does not result from law but rather from incidence of residence; and there has been nothing improper in the drawing of lines for attendance zones.
>
> "The contention of the Commissioner, however, is that racial imbalance is harmful to education; and for that reason, and that reason alone, he has made the order under attack in these proceedings."

The report of the Commissioner's Advisory Committee, as it appears in the Commissioner's decisions which are annexed to the petitions, provides support in the record for the Commissioner's determination. On application of the conventional test we find the Commissioner's decision to be neither arbitrary nor capricious. "Where there is found to be a rational basis for the administrative determination the judicial function is exhausted and the administrative agency, not the court, is the final arbiter." The court cannot substitute some other judgment for the judgment of the Commissioner that correction of racial imbalance is an educational aid to a minority group in attaining the skills and level of education which others have had for generations and that compulsory education should be designed for the greatest good of all.

We therefore examine the petitions to determine if there are any allegations of fact the resolution of which in the petitioners' favor would leave no rational basis for the administrative decision (Matter of O'Brien v. Comr. of Educ., 3 A D 2d 321, 325, app. dsmd. 4 N Y 2d 140). CPLR 3013 provides: "Statements in a pleading shall be sufficiently particular to give the court and parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be provided and the material elements of each cause of action or defense." In addition to allegations of violations of laws and of constitutional provisions the petitioners allege that there will be required "the expenditure of considerable sums of public monies * * * to prove additional transportation equipment, the hiring of additional personnel, and the purchase of and installation of additional traffic signal devices" and that they and other citizens and taxpayers "will be subjected to considerable wastage of public assets, social upheaval and anguish within the community in question". The expenditure of "considerable sums of public monies" for the purposes stated would not require a reasonable man to find the Commissioner's decision arbitrary. Moreover "considerable" is conclusory, indefinite and lacking in significance. The allegation of "wastage of public assets" is merely a statement of the petitioners' opinion; it is apparent they regard as wastage any expenditure in implementation of the Commissioner's decision, an opinion which they are free to entertain but which would not indicate that the Commissioner was arbitrary. As to "social upheavel" the Commissioner may not be said to be arbitrary in rejecting demagogues of any color who incite to hatred and violence. As to "anguish" the Commissioner's decision touches off a strong emotional negative reaction in persons of contrary views but that does not make his decision arbitrary. Finally it is alleged in the Vetere petition as unamended that on August 16, 1963, the mayor of the Village of Malverne announced "that the sum of $20,000.00 had been set aside by the Village to acquire traffic signals and similar equipment,

by way of implementing the plan to be adopted by the Board of Education." Proof that the mayor made such an announcement would not result in there being left no rational basis for the Commissioner's decision. Moreover the announcement was issued contemporaneously with a press release issued by the Board of Education publicizing a complicated proposal for enrollment of children in contravention of geographical attendance areas and that plan, as will later appear, was disapproved by the Commissioner. Moreover, as we have previously mentioned, the geographical area for attendance at the Woodfield school is the school district, the same as for the junior and senior high schools, and, until attendance zones have been established for the Davison Avenue and Lindner Place elementary schools, there is as to these schools no zoning in existence to complain of. We conclude that the petitions fail to state facts sufficient to constitute causes of action.

Finally we are required to advert to the pleadings to refer to technicalities which we propose to ignore for the reasons about to be stated. There is annexed to the original petition of Michael Vetere and to the Hummel and Abrams petition a press release dated August 16, 1963, of the Board of Education stating its intent to file with the Commissioner the following plan:

> "Grade 4 and Grade 5 pupils will attend Woodfield Road School, except for one balanced class of each grade at Davison Avenue and Lindner Place Schools. Kindergarten pupils will remain in the neighborhood schools. Pupils in Grade 1, 2 and 3 will attend either Lindner Place or Davison Avenue School, except for one class of each grade at Woodfield Road School."

The petitioners' orders to show cause were returnable September 13, 1963. However, the petitioner Vetere, in response to a motion for leave to intervene by the National Association for the Advancement of Colored People, cross moved by notice of motion returnable September 13, 1963, to add certain parties and also to amend his petition to state:

> "On or about the 16th day of August, 1963, the said Board of Education, acting in its official capacity as such and acting by virtue of the aforesaid decisions and orders of the Commissioner, adopted in part the racial

placement plan decreed by the Commissioner. Attached hereto and incorporated hereby by reference as Exhibit 'C' is a press release of August 16, 1963, whereby the said Board of Education described its proposed plan.

"Upon information and belief, subsequent to the commencement of this proceeding, the said Commissioner of Education rejected and disallowed such plan of the Board of Education."

The proposed amended petition is printed in the record and, pursuant to certification of the record on appeal subscribed by the petitioners' attorneys, the record contains also the decision of the Commissioner dated September 5, 1963, wherein he rejected the proposed plan of the Board of Education. The order and judgment of the court granted the petitioner Vetere's motion to add parties but is silent as to the amendment sought by the cross motion.

The court stated at Special Term:

"The Board's plan, following the aforesaid direction, required that 224 pupils from Woodfield Road School, selected on the basis that they are of the negro race, be transferred to the Davison Avenue and Linden Place Schools; 92 pupils from Davison Avenue School, selected on the basis that they are not of the negro race, be transferred to the Woodfield Road School; and 82 pupils from Linden Place School, selected on the basis that they are not of the negro race, be transferred to Woodfield Road School.

" * * * * *

"When a number or percentage of pupils of whatever race, color or creed, normally entitled and indeed required to attend a public school in their attendance zone, are denied admission, and, contrary to their wishes, are directed to attend a school in a different zone in order to eliminate racial imbalance, is this anything other than denial of admission on the ground of race or color, contrary to long established law?"

This is contradicted by the record although it is so alleged in the Vetere petition before the proposed amendment and in the Hummel petition. As stated in the proposed amended Vetere petition the Board's plan was rejected and the Commissioner's plan entailed centralization of grades four and five in the Woodfield school and reorganization of attendance areas so that children from kindergarten to third grade inclusive would attend either the Davison or Lindner school. The Commissioner's plan did not, as did the Board's rejected plan, require children to attend a school not located in

their attendance area.

This appeal was argued on the merits. The entire argument, both in the petitioners' brief and in the respondent Board of Education's brief, is directed exclusively to the Commissioner's decision. As a matter of fact the petitioners at page 33 of their brief state that the only plan before the court was the Commissioner's direction to the Board to "reorganize the attendance areas of the District so that all pupils from the kindergarten to grade 3 inclusive will attend either the Davison Avenue or the Lindner Place elementary school; all pupils in grades 4 or 5 will attend the Woodfield Road School." And they add "* * * it is pointless to speculate as to what the court might have decided with respect to some other plan." And there was at no time urged in briefs or arguments that the Board's rejected plan was an issue because the Hummel petition had not been amended to conform to the proposed amendment of the Vetere petition, which alleged and confirmed the rejection of the Board's plan or that the proposed amended petition should not be considered. The issue presented to us was solely the validity of the Commissioner's decision. We have mentioned that the same attorneys represent the petitioners in both proceedings. We therefore ignore the technical issues since they are not raised and treat the Commissioner's motions to dismiss as directed to the Vetere petition as proposedly amended and to the Hummel petition as if amended to conform to the proposed amendment of the Vetere petition and to conform to the undisputed and indisputable facts as they appear in the record.

The order and judgment should be modified, on the law and the facts, by reversing so much thereof that annulled a determination, of the appellant Commissioner of Education and that denied the appellant's motion to dismiss the petitions, and, as so modified, affirmed, without costs.

No.

The University of the State of New York

The State Department of Education

Before the Commissioner

IN THE MATTER

of the

Appeal of PATRICIA ANN MITCHELL, et al. against the Board of Education of Union Free School District No. 12 of the Town of Hempstead, Nassau County.

Jawn A. Sandifer, Esq.)
Robert L. Carter, Esq.)...Attorneys for Petitioners-respondents

Frank X. Altimari, Esq....Attorney for Respondent Board of Education

Joseph E. McMahon, Esq....Attorney for Respondent Board of Education

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It appearing that a decision was made on August 13, 1963, in Matter of Mitchell, et al., 3 Ed. Dept. Rep. 26, requiring certain action to be taken by the Board of Education of Union Free School District No. 12 of the Town of Hempstead, Nassau County; and

It further appearing that a review of the said order was sought in the New York State Courts in Matter of Vetere, et al. v. Allen, and said litigation having been determined and terminated by a decision of the New York State Court of Appeals (15 N.Y. 2d 259) upholding and affirming the said order of August 13, 1963; and

It further appearing that on petition for certiorari to the United States Supreme Court, the said United States Supreme Court, on October 11, 1965 denied the said writ of certiorari (332 U.S. 825), and the said order having thus become final; and the implementation of the said order of August 13, 1963 having

been directed to take place not later than January 31, 1966; and

It further appearing that inspite of the said decisions and determinations of the highest State Court of the United States Supreme Court, further litigation was instituted in the United States District Court for the Eastern District of New York, by certain parties, again seeking to overturn the said order of August 13, 1963; and the matter having come on to be held before said Court, but no decision having as yet been handed down therein; and

It further appearing that the board of education of said union free school district no. 12, even though no Stay Order has been granted by the said District Court, nevertheless is concerned about proper procedure pending the decision of the said Court, and the said board of education having taken a number of steps and procedures looking toward the implementation of the said order of August 13, 1963 and the said board of education, however, being of the opinion that certain substantial expenditures will necessarily have to precede or accompany implementation of the said order,

NOW, THEREFORE, in view of the possibility that a decision of the said District Court may not be handed down prior to the said date of January 31, 1966, by virtue of the powers vested in me by the provisions of Section 4 of Article V of the New York State Constitution and by the provisions of the Education Law, pasticularly Section 311 thereof, it is

ORDERED, that the effective date of my order of August 13, 1963, be, and the same hereby is, postponed from January 31, 1966, to March 1, 1966, or until five days after such earlier

date as a decision shall be handed down by the United States District Court for the Eastern District of New York, in Matter of Olson v. Allen, presently pending before the said Court.

IN WITNESS WHEREOF, I, James E. Allen, Jr., Commissioner of Education of the State of New York, for and on behalf of the State Education Department, do hereunto set my hand and affix the seal of the State Education Department, at the City of Albany, this 24 day of January, 1966.

Commissioner of Education

Work
Folder

SUPREME COURT OF THE STATE OF NEW YORK
ALBANY COUNTY

IN THE MATTER OF THE APPLICATION

of

PATRICIA ANN MITCHELL, Minor, by her parent and guardian, Burbank Mitchell,

Petitioner,

For an Order under Article 78, Civil Practice Law,

-against-

HONORABLE JAMES E. ALLEN, As Commissioner of Education of the State of New York,

Respondent.

ORDER TO SHOW CAUSE

Index No.

Upon the annexed petition of Patricia Ann Mitchell, by her parent and guardian, Burbank Mitchell, sworn to the 1st day of February, 1966, and upon all of the proceedings heretofore had herein;

LET the Honorable James E. Allen as Commissioner of Education of the State of New York, respondent herein, show cause before this Court in the County Court House, in the City of Albany, on the day of , 1966, at o'clock in the of that day, or as soon thereafter as counsel can be heard, why an order should not be made directed to Honorable James E. Allen as Commissioner of Education of the State of New York, respondent herein, commanding him to desist and refrain from executing his order of January 24, 1966, entered in the case of In the Matter of the Appeal of Patricia Ann Mitchell v. the Board of Education of Union Free School District No. 12 of the Town of Hempstead, Nassau County, as would stay respondent's order of

August 13, 1963, and desist and refrain from entering any further similar order.

LET service of a copy of this order, together with a copy of the petition upon which it is based, on the Honorable James E. Allen, as Commissioner of Education of the State of New York, on or before on the day of , 1966, be deemed due and sufficient service.

Justice
Supreme Court, State of New York

Dated:

SUPREME COURT OF THE STATE OF NEW YORK
ALBANY COUNTY

IN THE MATTER OF THE APPLICATION of PATRICIA ANN MITCHELL, Minor, by her parent and guardian, Burbank Mitchell, Petitioner, For an Order under Article 78, Civil Practice Law, -against- HONORABLE JAMES E. ALLEN, As Commissioner of Education of the State of New York, Respondent.	PETITION Index No.

TO THE HONORABLE, SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF ALBANY:

The Petitioner, Patricia Ann Mitchell, by her parent and guardian, Burbank Mitchell, respectfully says:

1. Petitioner in this proceeding was also the petitioner In the Matter of the Appeal of Patricia Ann Mitchell v. the Board of Education of Union Free School District No. 12 of the Town of Hempstead, Nassau County. This former action was an appeal to the Commissioner of Education of the State of New York, respondent herein, which sought the elimination of racial imbalance in Union Free School District No. 12. That proceeding was originally commenced in September of 1962. The Commissioner of Education rendered a decision and entered an order favorable to petitioner on June 17, 1963. A copy is attached as Exhibit A. A motion to reopen was denied on August 13, 1963. This decision was challenged in the courts of the State of New York in the case of Vetere v. Allen, 41 Misc. 2d 200, 245 NYS 2d 682 (1963), reversed 21 A.D. 2d 561, 251 NYS 2d 480 (1964), aff'd 15N.Y. 2d 259, 258 NYS 2d 77 (1965), cert denied 86 S. Ct. 60, in which the petitioner herein

appeared and participated as an intervenor-respondent. The decision in this case upheld the power of the Commissioner of Education to enter an order requiring the elimination of racial imbalance and rejected arguments that such an order would violate provisions of state law as well as the United States Constitution.

2. On January 24, 1966, Honorable James E. Allen, as Commissioner of Education of the State of New York, entered an order in the case In the Matter of the Appeal of Patricia Ann Mitchell v. the Board of Education of Union Free School District No. 12 of the Town of Hempstead, Nassau County, postponing the effective date of his order of August 13, 1963, from January 31, 1966, to March 1, 1966, or until five days after such earlier date as a decision shall be handed down by the United States District Court for the Eastern District of New York In the Matter of Olsen v. Allen, presently pending before the said court. A copy of the January 24, 1966, order is attached hereto as Exhibit B.

3. The order of January 24, 1966, was entered into without notice to petitioner in the case of In the Matter of Patricia Ann Mitchell v. the Board of Education of Union Free School District No. 12 of the Town of Hempstead, Nassau County, and without petitioner being afforded an opportunity to be heard. Petitioner alleges that the failure of respondent to allow petitioner to be heard before entering the order complained of denied to him due process of law under the Fourteenth Amendment to the United States Constitution.

4. Petitioner further alleges that entry of the order complained of was arbitrary and capricious in that it is based upon a challenge to the Commissioner's power to order the elimination

of racial imbalance complained of In the Matter of Olsen v. Allen. As the order complained of itself indicates, the very issue has been litigated and finally determined in the highest court of the State of New York and certiorari has been denied in the Supreme Court of the United States. Therefore, the identical issues which are raised In the Matter of Olsen v. Allen are clearly without any merit whatsoever on their face. In using the mere filing of a frivolous complaint as an excuse to delay the implementation of a final order which was entered almost 2½ years ago, respondent has denied to petitioner vested rights which resulted from the June 17, 1963, order and the denial of a motion to reopen on August 13, 1963.

5. The action of respondent entering the order of January 24, 1966, clearly indicates that he considers the right of petitioner to an education free of racial imbalance as adjudicated by respondent himself to be capable of abridgement by respondent at his mere whim. The Commissioner, under this interpretation, has acted as if he has the power to enter order after order without any reasonable cause delaying the implementation of his original order. Thus, while this order delays implementation to March 1, 1966, the Commissioner, if unrestrained, could enter a series of orders over a period of years delaying implementation until the matter of Olsen v. Allen and other similar delaying actions are filed and appealed to higher and higher courts.

6. Petitioner is now so situated that she is completely without remedy under the order compolained of and must necessarily resort to this proceeding under Article 78 of the Civil Practice Laws and Rules for a writ of prohibition herein prayed for.

WHEREFORE, the petitioner prays that an order be granted

out of this Court directed to the Honorable James E. Allen, as Commissioner of Education of the State of New York, commanding him to desist and refrain from effectuating his order of January 24, 1966, and to refrain from entering any further orders on similar grounds and under similar circumstances in the case of In the Matter of Patricia Ann Mitchell v. the Board of Education of Union Free School District No. 12 of the Town of Hempstead, Nassau County, until the further direction of this Court.

Respectfully submitted,

_____

Petitioner

Robert L. Carter
Lewis M. Steel
Joan Franklin
20 West 40th Street
New York, New York 10032
Attorneys for Petitioner

Dated: February , 1966

VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

Burbank Mitchell, being duly sworn, deposes and says that he is the parent and guardian of Patricia Ann Mitchell, that he has read the foregoing petition, and that the same is true to the knowledge of the affiant, except as to the matters therein alleged upon information and belief, and as to those matters he believes them to be true.

_____

Burbank Mitchell

Sworn to before me this
____day of February, 1966.

_____

PREME COURT COUNTY OF ALBANY

IN THE MATTER OF THE APPLICATION

of

PATRICIA ANN MITCHELL, Minor, by her parent and guardian, Burbank Mitchell,

Petitioner,

For an Order under Article 78, Civil Practice Law,

9431 MAR-1'66

against

HONORABLE JAMES E. ALLEN, as Commissioner of Education of the State of New York,

Respondent

(Supreme Court, Albany County Special Term, February 11, 1966)
(Calendar #20)

(Justice John H. Pennock, presiding)

APPEARANCES: Robert L. Carter, Esq.
Lewis M. Steel, Esq.
Joan Franklin, Esq.
Attorneys for Petitioner
20 West 40th. Street
New York, New York

Charles A. Brind, Esq.
Attorney for Respondent
State Education Building
Albany, New York
John P. Jehu, Esq. of counsel

PENNOCK, J:

This is an application by the petitioner for an order directing James E. Allen, as Commissioner of Education of the State of New York, respondent, to desist and refrain from executing his order of January 24, 1966, entered in the case of "In the Matter of the Appeal of Patricia Ann Mitchell

v. The Board of Education of Union Free School, District No. 12 of the Town of Hempstead, Nassau County", as would stay respondent's order of August 13, 1965, and desist and refrain from entering any further similar orders.

The respondent cross-motioned for an order and judgment dismissing the petition on the grounds, first, that there is another action pending on precisely and same issues involved in this proceeding, in the United States District Court for the Eastern District of New York, and two, this court should not proceed in the absence of the Board of Education of Union Free School, District No. 12, of the Town of Hempstead, Nassau County, and in the absence of Wayne Olson (the petitioner in the Federal Court Action), who should be made parties hereto, and three, because the petition fails to state a cause of action.

The court at special term denied the motion to dismiss the petition and further found that the order of January 24, 1966, was devoid of the basic ingredient of the furtherance of education or for educational purposes. The able attorney for the respondent Commissioner urged on oral argument that the supplemental order was based solely for educational reasons. The answering affidavit of the attorney for the Commissioner further averred, "That considering the entire situation in light of what is best for the education of the children involved, the Commissioner felt that postponement of the implementation of the said Order for the short period required until the decision of the United States District Court in the Olson case was the wisest course to take so as to avoid further unnecessary strife and dissension in the community which already

had voted on January 25, 1966 against the expenditure of all the moneys which the Board of Education had submitted to them for approval; that consequently, the Commissioner issued a formal order postponing the date of implementation from January 31, 1966 until either March 1, or five days after the decision of the United States District Court****." These averments do not meet the test of educational purpose.

This court made an interim determination that the Commissioner be granted ten days to amend his supplemental order setting forth the educational purposes upon which his order was made. The ten days has expired and the Commissioner, which is his prerogative, did not amend the supplemental order and as it stands the order is based upon the action pending in Federal Court and no educational reasons are set forth therein.

At this juncture the petitioner would be entitled to the relief sought as the original order of the Commissioner is a mandate both as to the Commissioner and the local Board of Education. He must comply and implement his own order unless he has validly recinded or amended the order. In this instance there was no validity to the supplemental order and although the Commissioner was not arbitrary the order itself is illegal as its authority rests in a collateral action in Federal court which during the ten day pendency was determined in the United States District Court adversely to that petitioner (Olson) and it is urged that the application before the court is now academic. In this the court disagrees. The supplemental order of the Commissioner

was illegal and without basis in law and fact regardless of the determination of the Olsen case. The Commissioner's decision in his original order according to the Court of Appeals, "rests squarely on his findings of the inadequacy of such schools from the viewpoint of educational soundness." (Matter of Vetere v. Allen, 15 N.Y. 2d 259.)

In conclusion the order of January 23, 1966 of the respondent Commissioner is determined illegal, however, the prayer for an order to stay the respondent to desist and refrain from entering any further orders is denied as such orders, if based upon educational purposes, may very well be valid.

Petitioner to submit order in accordance with this determination.

FOR A FIRST CAUSE OF ACTION

The petitioner above-named, by _____, his attorney, for his petition herein, respectfully shows and alleges that:

1. The petitioner is a citizen of the United States and a Resident of the State of New York, in the village of Malverne, in the County of Nassau and is the parent of a child attending the public schools of the village of Malverne, Union Free School District No. 12.

2. Respondent, James E. Allen, Jr. is the duly appointed Commissioner of Education of the State of New York, and by virtue of such office is the chief executive officer of the state system of education and of the Board of Regents and is charged bylaw with the power and duties, among other things, to enforce laws and policies of the state educational system and of the Board of Regents; and to withhold public money from districts wilfully disobeying any provision of law, decision, or regulation.

3. Amongst those duties are those set forth in section 305 of the State Education Law:

> "The Commissioner of education is hereby charged with the following powers and duties:
> 1. He is the chief executive officer of the state system of education and of the Board of Regents. He shall enforce all general and special laws relating to the educational system of the state and execute all educational policies determined by the Board of Regents.
>
> 2. Heshall have general supervision over all schools and institutions which are subject to the provisions of this chapter, or of any statute ~~xxx~~ relating to education, and shall cause the same to be examined and inspected, and shall advise and guide the school officers of all districts and cities of the state in relation to their duties and the general management of the schools under their control."

4. Further powers of said Commissioner of Education are set forth in section 306(2):

> "Said Commissioner of education may also withhold from any district or city its share of the public money of the state for wilfully disobeying any provision of law or any decision, order or regulation as aforesaid."

5. There are three elementary schools in the Union Free School District No. 12 (Malverne-Lakeview School District), including the Woodfield Road School, which has an increasing Negro to white ratio of approximately 75 per cent at present. The two other elementary schools in the district have a Negro population of approximately fourteen per cent.

6. On or about June 17, 1963, defendant James E. Allen, Jr., acting in his official capacity as Commissioner of Education of the State of New York, and as charged by law, issued to the Board of Education of Union Free School District No. 12, Malverne, New York, a directive compelling said Board of Education to reassign pupils within the District so as to improve education within the said school district and achieve a better balance of white and Negro children.

7. The directive, pursuant to a statement of policy adopted and announced in January, 1961, by the Board of Regents, also defined educationally a x racially imbalanced school as one having "fifty per cent or more Negro pupils enrolled."

8. The directive's proposals, originally recommended by the Commissioner of State Education's Advisory Committee on Human Relations and Community Tensions, ordered the Malverne-Lakeview District to:

"Reorganize the attendance areas of the District so that all pupils in grades 4 or 5 will attend the Woodfield Road School. All pupils in grades 6 to 12 will, of course, attend the Junior and Senior High School as they do now."

9. Upon information and belief, on or about October 19, 1966, the Board of Education of Union Free School District No. 12, in order to frustrate said directive and restore the racially imbalanced school system, offered patents within said district a plan which allowed the Board of Education ~~of Union Free School District No. 12~~ to relocate pupils to other schools of the Malverne-Lakeview District after a "free-choice" selection by the pupils' parents or legal guardians.

10. The result of the above-mentioned alternative added by the Malverne-Lakeview Board of Education is to abandon the directive of the Commissioner of Education, and to replace it with a system a controlled by the request of the parents or legal ~~guza~~ guardians of the pupils, which, in effect, will recreate the educationally bad racially imbalanced school system.

11. The new system of pupil assignment adopted by the Malverne-Lakeview Board of Education is a wilful disobeyance of the policy of the State Board of Regents, the law, and is in direct opposition to that system established by the directive of the Commissioner of Education and of the Constitution of the State of New York.

12. The Commissioner of Education is charged by law to enforce his directives and to ensure that this directive is put into effect by the Board of Education of Malverne-Lakeview; to this end he is empowered to withhold funds from any school district whichwilfully disobeys his directive.

13. On or about _____, 1966, the petitioner requested the respondent to fulfill his legal duty to enforce his directive and the policy of the State Board of Regents by withholding from the Board of Education of Union Free School District No. 12 its share of the public money of the state.

14. The respondent has failed and neglected to comply with the petitioner's said request and has not fulfilled his legal duty to enforce his special directive, the policy of the Board of Regents, the law and the Constitution of the State of New York, related to the educational system of the state.

15. The Respondent's refusal to fulfill his legal duty to enforce both his directive and the policy of the State Board of Regents permits the said school district to receive state funds for the reinstitution of a constitutionally bad, racially imbalanced school system, and will unless restrained will continue to be used in such illegal fashion.

SECOND CAUSE FOR ACTION

16. The petitioner re-alleges paragraphs numbers one through twelve above as if fully set forth herein.

17. Upon information and belief the Board of Education of Union Free School District Number 12, Malverne-Lakeview, added the above-mentioned amendment to the directive of the respondent with the intention and for the purpose of frustrating the said respondent's directive and to recreate and

maintain a bi-racial school system, thus instituting a ~~fine~~ form of racial imbalance and segregation in the Malverne-Lakeview School District.

18. Such a racially imbalanced bi-racial school system, instituted by law, and maintained by directive, is unconstitutional under the 14th amendment of the Constitution of the United States, and under the decision of the Supreme Court of the United States in Brown v. Board of Education _____ U.S. _____, and of S. 1983 of Title 42, U.S. Code.

19. The distribution of public money of the State of New York and Union Free School District No. 12, Malverne-Lakeview, aids and implements the unconstitutional purposes of the Malverne-Lakeview School Board, and is, therefore, an unconstitutional use of public money.

20. As alleged in paragraphs numbered ~~2, 3, and 4~~ 2, 3, and 4, the respondent has the power to withhold from any school district its share of the public money. The failure of the respondent to exercise this power and to withhold public money from Union Free School District No. 12, Malverne-Lakeview, is a direct violation of the Constitution of the United States and the Constitution of the State of New York.

Wherefore, petitioners respectfully request judgment against respondent, enjoining respondent from distributing, giving, lending, or in any way offering to the Board of Education of the Union Free School District Number 12 any funds of the State of New York allotted for education purposes, and that the said respondent withhold any such funds and direct any other

officials of the State of New York having any authority over the disbursement of state funds to withhold such funds from UNION FREE SCHOOL DISTRICT NO. 12 and from any agents, servants, or employees of said school district until the said school district has given ample demonstration of its intention to carry out the Constitutions of the United States and of the State of New York, the policy of the State Board of Regents and the said directives of the State Commissioner of Education as applied to UNION FREE SCHOOL DISTRICT NO. 12, and that this Court retain jurisdiction of this action for such purposes; and that petitioners have all other relief necessary to effectuate the foregoing.

21. Petitioner is applying for an order to show cause why the respondent should not so perform his legal duty and for an order pursuant to S.306(2) of the State Education Law, demanding that the Commissioner of Education withhold from the Board of Education of Union Free School District No. 10 its share of the public money of the state until it complies with the directive of the Commisssioner.

22. No previous application for the relief herein requested has been made to any other court of judge.

WHEREFORE, Petitioner requests that an order to show cause in the form annexed issue out of and under the seal of this Court; and that a final judgment be made directing the respondent herein to withhold from the Board of Education of Union Free School District No. 12, H-L, its share of the public money of the state until such time as the Board of Education shall have in all particulars conformed with the said directive of the Commissioner.

Rothstein

IRVING SVERDLIK
COUNSELLOR AT LAW
26 BROADWAY
NEW YORK, N. Y. 10004
212 DI 4-4747

May 26, 1966

LONG ISLAND
15 BUCKINGHAM PLACE
LYNBROOK, N. Y.
516 LY 9-9013

Lawrence H. Strear, Esq.
53 North Park Avenue
Rockville Centre, New York

Re: Malverne School District Matter

Dear Larry:

I acknowledge your note indicating that you received my letter of May 20 with its enclosures. I have since obtained the various items listed on Page 2 of my letter of May 20 except only for Item 6 being the Notice of Appeal in the Olson case in the United States Circuit Court of Appeals. As you know, I cannot say of my own knowledge that such Notice of Appeal has been filed, although I have heard that such Appeal Notice has been filed. I would appreciate it if anyone receiving this letter who has copy of or access to such copy would send me a copy of such Notice of Appeal.

Enclosed please find the following:

1. The original decision by Judge Bookstein annulling Com. Allen's order.

2. The opinion of the New York Court of Appeals in the Vetere case wherein the Court of Appeals affirmed the Appellate Division which reversed Judge Bookstein. The citation is 15NY 2d, 259. Please note the two dissenting opinions.

3. The recent decision by the United States Supreme Court in the Vetere case denying certiorari. This is a photostatic copy of the report of the decision in the Supreme Court Reporter advance sheets.

4. The pleadings in the Olson case

5. The decision of Judge Bartells in the Olson case denying the temporary injunction and dismissing the complaint.

6. The order with notice of settlement apparently recently issued based upon Judge Pennock's decision.

7. Memorandum submitted by plaintiff's attorney in the Olson case in support of plaintiff's motion for a preliminary injunction which was denied.

8. Today's New York Times article about certain related pending litigations involving similar integration problems.

Please note that the complaint in the Olson case (Item 4 above) does not include Exhibit A, which is the original directive of Com. Allen dated 6/17/63 previously forwarded to you with my letter of May 20. Exhibit B, which is attached to the complaint, is the report of the three-man advisory committee referred to in Com. Allen's original order.

Sincerely,

IS:jd
Encs.

IRVING SVERDLIK

ccs: Carl Binder, Esq.)
✓ Mr. Ewell Finley) (With copies of attached exhibits)
Mr. Gordon Rotherstein)

IRVING SVERDLIK
COUNSELLOR AT LAW
26 BROADWAY
NEW YORK, N. Y. 10004
212 DI 4-4747

LONG ISLAND
15 BUCKINGHAM PLACE
LYNBROOK, N. Y.
516 LY 9-9013

May 31, 1966

Lawrence H. Strear, Esq.
53 North Park Avenue
Rockville Centre, New York

Re: Malverne School District Matter

Dear Larry:

Further to our conversation enclosed please find excerpts from "Newday" of May 27 and 28 and the "Long Island Press" of May 28. I will try to continue to spot such references and reproduce and distribute.

Meanwhile, if you or any of the other receivers of this letter locate any pertinent newspaper references, please bring such to the attention of all of us. If the extract is mailed to me, I will be glad to reproduce and distribute.

Best wishes.

Sincerely,

IS:jd
Encs.

IRVING SVERDLIK

ccs: Carl Binder, Esq.)
Mr. Ewell Finley) with enclosures
Mr. Gordon Rothstein)

Malverne Readies New School Budget

New xdpy — 5-7-69

Malverne—Vice President John W. Lewis Jr. of the Board of Education said last night that the board has trimmed about $76,000, including funds which had been earmarked to implement a state-ordered racial balance plan, from the $3,874,762 budget which was defeated by voters May 3.

The new budget will be submitted to voters June 14. Besides eliminating the funds for the racial balance plan, Lewis said, the board has reduced the amount budgeted for maintenance and put adult education in a separate proposition. It would raise the tax rate from the present $6.03 to $6.73 for each $100 of assessed valuation. The defeated budget would have resulted in a $7.03 tax rate. The board will hold a public meeting at 8:15 PM June 7, and copies of the budget will be available on or before that day in the district's five schools, Lewis said. Board President Fred Hook said the budget was tentative and hadn't yet been approved formally by the board.

Lewis, Venerando J. Indelicato and Charles W. Reardon were elected May 3, forming a new majority on the board. After their election, they pledged to substitute a "free choice plan" for the state's integration plan. Last night, Lewis said that they had been too busy with the budget to take action on a free choice plan, adding that they would settle that issue after the June 14 budget vote. However, the board members have advised the three elementary school principals "to prepare for any eventuality," Lewis said. Asked what kind of eventuality he meant, he replied, "As far as your imagination can stretch."

Lewis, Indelicato and Reardon had called for defeat of the budget during their campaign because it contained funds to implement the state integration plan. Lewis said last night that the board "would actively solicit the support of residents" on the new budget.

Newsday

Saturday, May 28, 1966

Allen Deplores Busing Foes' Gains at Polls

Stony Brook—State Education Commissioner James E. Allen Jr., here for a meeting of the State Board of Regents, expressed disppointment yesterday at the victories of the proponents of neighborhood schools in several Long Island school board elections earlier this month.

In his first comment on the subject since the elections earlier this month, Allen said: "I have known for a long time that integration in education was not going to be achieved easily or quickly . . . Therefore I am not surprised. I am disappointed in the results of some of these elections." He refused to single out any school district, but his reaction came in response to a reporter's question about the victories for candidates who favored neighborhood schools over the idea of busing for racial balance in schools. These were in the Malverne, Roosevelt, Amityville and Bellport-Brookhaven-East Patchogue districts.

"I think what these results mean is that we must not become discouraged, but must strengthen our efforts and determination to eliminate segregation . . ." Allen said. Mrs. Richard Cummings, a spokesman for Mothers to Protect Neighborhood Schools, a Malverne group that sponsored private tutoring classes in defiance of the racial balancing plan ordered by Allen, said last night: "Our school system in Malverne has not been segregated. It has been integrated all along. Our fight is for neighborhood schools."

The 15-member regents board, which oversees the entire educational program of the state, held its regular monthly meeting in the library building at the State University at Stony Brook. The regents normally meet in Albany, but once a year meet at another location.

Other highlights of the meeting included:

- Edgar W. Couper of Binghamton, chancellor of the board of regents, announced that he favored the elimination of public voting on school budgets. Couper said that he favored the system used in 54 cities in the state of having the school board approve the budget. This brought sharp reaction last night from Dr. George Hillman, president of the Nassau-Suffolk School Boards Association. He said: "I certainly would not want to disenfrachise the voter. It is still one of the ways for the voter to participate in public education."
- The regents revoked the medical license of Dr. Joseph Eisenstein of 409 Lindell Blvd., Long Beach, who pleaded guilty last year to defrauding the Nassau Welfare Department of $100,000 for treatment of patients who did not exist.
- The board recommended that the U.S. commissioner of education approve matching funds for laboratory equipment for $21,841 for Suffolk Adelphi College, $10,962 for Hofstra University; $19,535 for Nassau Community College; and $49,715 for New York Institute of Technology at Old Westbury.

Allen Not Swayed By LI Busing Foes

L-I Press 5/28/66

By THOMAS CONDON

State Education Commissioner James E. Allen Jr. is more determined than ever to effect racial balance in Long Island school districts despite defiance in Malverne to the Princeton Plan and the recent election of anti-busing candidates in Amityville and Bellport.

Allen, chief executive officer of the Board of Regents, said after a board meeting at the State University at Stony Brook yesterday he is not discouraged by the election results but "will strengthen efforts to eliminate segregation."

The commissioner, however, refused comment on a telegram he received during the meeting from Oscar Gassner, chairman of the We Care Committee, stating that the Malverne school board Thursday night announced its intentions to revert to the neighborhood school pupil-assignment plan in September.

Gassner said the school board also authorized principals to inform teachers of its plan.

"We'll cross when we get to that bridge," Allen said without clarifying the statement.

John W. Lewis, school board vice president, denied last night the board made any such announcements or authorizations. He conceded, however, that the board is studying means to effect such a change.

Lewis and two other trustees, who comprise the board majority, were elected earlier this month on a platform calling for the implementation of a "free choice" program, under which students could be enrolled in any of the three elementary schools.

* * *

ALLEN SAID he wasn't surprised over the results of some of the elections where racial imbalance was a key issue but was "disappointed."

"We lost some battles but we lost before," he said, predicting 'ultimate victory in the struggle for civil rights in the state and country."

Aside from a "few set backs" the school districts generally are moving in the right direction, Allen said. He pointed to 'encouraging signs" in Glen Cove, Freeport, Roosevelt and upstate Rochester.

Allen attributed the high percentage of budget defeats on Long Island earlier this month to several factors including opposition to the civil rights movement and a general discontent about all taxes.

Sixteen of the 20 budgets defeated in the state were on Long Island. There are about 800 districts in the state.

* * *

MEANWHILE, the education director of the NAACP announced last night that Allen will be asked to order the Bellport-Brookhaven-East Patchogue School Board to prepare a plan to desegrate its schools.

June Shagaloff, after conferring with W. Burghardt Turner, Long Island coordinator of the NAACP, said that the request will be filed within two weeks.

By reversing its decision to implement a voluntary racial balance plan, Turner said the Bellport board "yielded to the bigots in the community."

Allen also announced yesterday that a seminar on school integration will be held during the summer at the college of New Rochelle for school trustees in districts where racial imbalance exists or has existed.

Teams from each district will be invited to attend either the session during the last two weeks of July or the one the first two weeks of August.

* * *

AS FOR THE controversial $1 million "talking typewriter" grant turned down by the Freeport School Board, the commissioner said he was "disappointed" but was "pleased" it was not given to a district outside the state.

"My advice to all boards is to do research and experiment with better ways to operate schools. This is what is needed in education today."

Yesterday's regular monthly meeting marked the first time the Board of Regents officially convened in Stony Brook.

The 15-member board usually meets in Albany but holds one or two meetings a year at one of the state universities.

MISHKIN AND STREAR
COUNSELLORS AT LAW

STANLEY MISHKIN
LAWRENCE H. STREAR
SETH WALLER

53 N. PARK AVENUE, ROCKVILLE CENTRE, N. Y.
ORIOLE 8-4441

June 1, 1966

COPY

Irving Sverdlik, Esq.
26 Broadway
New York, N.Y.

Re: Malverne School District Matter

Dear Irving:

I spoke with Mr. Steele on the telephone today in regards to the Order that he submitted in Albany County for signature.

He advised that the Order was signed today and he will serve a copy on Commissioner Allen's office tomorrow.

Very truly yours,

MISHKIN AND STREAR

LHS:PJT

By_____
Lawrence H. Strear

cc: Gordon Rothstein
322 Glen Road
Lakeview, N.Y.

Malverne School

AMERICAN TEAMWORK WORKS

TWX No. 710-581-2129

National Urban League, Inc.

55 EAST 52ND STREET, NEW YORK, N. Y. 10022 · AREA CODE 212 – 751-0300

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Clayton R. Yates
Dwight R. Zook

November 2, 1966

Carl Rachlin, Esq.
Scholarship, Education and Defense
Fund for Racial Equality
150 Nassau Street
New York, New York

Dear Mr. Rachlin:

We deeply regret our inability to attend your last meeting concerning the Malverne school problem, and would like to learn exactly what strategies are being planned.

Moreover, let us know if there are any specific ways we can assist your office in helping to resolve this extremely complex problem.

Best wishes.

Sincerely yours,

Frank L. Stanley, Jr.
Associate Director

FLS/rc

Malv.

November 10, 1966

Mr. Frank L. Stanley, Jr.
Associate Director
National Urban League, Inc.
55 East 52nd Street
New York, New York 10022

Dear Mr. Stanley:

Thank you for your kind letter of November 2nd. We will certainly keep you advised of all steps that we plan to take in the Malverne school situation.

Sincerely yours,

Carl Rachlin
General Counsel

CR:ns

November 10, 1966

Robert Carter, Esq.
NAACP
20 East 40th Street
New York, New York

Dear Bob:

As you can see from a quick glance at the enclosed, it's still only a very rough draft, needing formal as well as substative correction. At least now, however, you have something in front of you which we can discuss, and I look forward to doing so at your earliest convenience.

Sincerely,

Carl Rachlin
General Counsel

CR:ns
Enclosure

FOR A FIRST CAUSE OF ACTION

The petitioner above-named, by _____, his attorney, for his petition herein, respectfully shows and alleges that:

1. The petitioner is a citizen of the United States and a Resident of the State of New York, in the village of Malverne, in the County of Nassau and is the parent of a child attending a public school of the Union Free School District No. 12.

2. Respondent, James E. Allen, Jr., is the duly appointed Commissioner of Education of the State of New York, and by virtue of such office is the chief executive officer of the state system of education and of the Board of Regents and is charged by law with the power and duties, among other things, to enforce laws and policies of the state educational system and of the Board of Regents; and to withhold public money from districts wilfully disobeying any provision of law, decision, or regulation.

3. Amongst those duties are those set forth in section 305 of the State Education Law:

> "The Commissioner of Education is hereby charged with the following powers and duties:
> 1. He is the chief executive officer of the state system of education and of the Board of Regents. He shall enforce all general and special laws relating to the educational system of the state and execute all educational policies determined by the Board of Regents.
>
> 2. He shall have general supervision over all schools and institutions which are subject to the provisions of this chapter, or of any statute relating to education, and shall cause the same to be examined and inspected, and shall advise and guide the school officers of all districts and cities of the state in relation to their duties and the general management of the schools under their control."

4. Further powers of said Commissioner of Education are set forth in section 306(2):

> "Said Commissioner of education may also withhold from any district or city its share of the public money of the state for wilfully disobeying any provision of law or any decision, order or regulation as aforesaid,"

5. There are three elementary schools in the Union Free School District No. 12 of the Town of Hempstead, County of Nassau, including the Woodfield Road School, to wit: Lindner Place, Malverne, Davison Avenue in Lynbrook, and Woodfield Road School.

6. On June 17, 1963, respondent James E. Allen, Jr., acting in his official capacity as Commissioner of Education of the State of New York, and as charged by law, issued to the Board of Education of Union Free School District No. 12, Malverne, New York, a directive ordering said Board of Education to reassign pupils within the District so as to improve education within the said school district by achieving a better balance of white and Negro children.

7. The directive's proposals, originally recommended by the Commissioner of State Education's Advisory Committee on Human Relations and Community Tensions, ordered the Union Free District No. 12 to:

> "Reorganize the attendance areas of the District so that all pupils from kindergarten to grade three inclusive will attend either the Davison Avenue or the Lindner Place elementary school; all pupils in grades four or five will attend the Woodfield Road School. All pupils in grades six to twelve will, of course, attend the Junior and Senior High School as they do now."

8. Upon information and belief, on or about October 19, 1966, the Board of Education of Union Free School District No. 12, in order to frustrate said directive and restore the racially imbalanced school system, offered parents within said district a plan which allowed the Board of Education to relocate pupils to other schools of the District after a so-called "free-choice" selection by the pupils' parents or legal guardians.

9. The result of the above-mentioned alternative added by the Union Free School District No. 12 Board of Education is to avoid and abandon the directive of the Commissioner of Education, and to replace it with a system controlled by the request of the parents or legal guardians of the pupils, which, in effect, will recreate the educationally bad, racially imbalanced school system.

10. The new system of pupil assignment adopted by the Union Free School District No. 12 Board of Education is a wilful disobedience of the policy of the State Board of Regents, and is in direct opposition to that system established by the directive of the Commissioner of Education, the law and the Constitution of the State of New York.

11. The Commissioner of Education is charged by law to enforce his directives and to ensure that this directive is put into effect by the Board of Education of Union Free School District No. 12; to this end he is empowered to withhold funds from any school district which wilfully disobeys his directive.

12. On or about _____, 1966, the petitioner requested the respondent to fulfill his legal duty to enforce his directive and the policy of the State Board of Regents by withholding from the Board of Education of Union Free School District No. 12 its share of the public money of the state.

13. The respondent has failed and neglected to comply with the petitioner's said request and has not fulfilled his legal duty to enforce his special directive, the policy of the Board of Regents, the law and the Constitution of the State of New York, related to the educational system of the state.

14. The Respondent's refusal to fulfill his legal duty to enforce both his directive and the policy of the State Board of Regents permits the said school district to receive state funds for the institution of a constitutionally deficient, racially imbalanced school system, and unless restrained will continue to be used in such illegal fashion.

15. The continuance of state funds has led to the perpetuation of the racially imbalanced system to the injury of the infant petitioner and other Negro school children.

SECOND CAUSE FOR ACTION

16. The petitioner re-alleges paragraphs numbers one through twelve above as if fully set forth herein.

17. Upon information and belief the Board of Education of Union Free School District No. 12, added the above-mentioned Board resolution to the directive of the respondent with the intention and for the purpose of frustrating the said respondent's directive and to recreate and maintain a bi-racial school system, thus instituting a form of racial imbalance and segregation in the Malverne-Lakeview School District.

18. Such a racially imbalanced bi-racial school system, instituted by law, and maintained by directive, is unconstitutional under the 14th amendment of the Constitution of the United States, and under the decision of the Supreme Court of the United States in Brown v. the Board of education _____U.S. _____, and of S. 1983 of Title 42, U.S. Code.

19. The distribution of public money of the State of New York and Union Free School District No. 12, aids and implements the unconstitutional purposes of the Union Free School District School Board, and is, therefore, an unconstitutional use of public money.

20. As alleged in paragraphs numbered 2,3, and 4, the respondent has the power to withhold state aid from any school district. The failure of the respondent to exercise this power and to withhold state aid from Union Free School District No. 12, is a direct violation of the Constitution of the United States and the Constitution of the State of New York.

21. Petitioner is applying for an order to show cause why the respondent should not so perform his legal duty and for an order pursuant to S. 306 (2) of the State Education Law, demanding that the Commissioner of Education withhold from the Board of Education of Union Free School District No. 12 its share of the public money of the state until it complies with the directive of the Commissioner.

22. No previous application for the relief herein requested has been made to any other court of judge.

WHEREFORE, petitioners respectfully request:

1) judgment against respondent, enjoining respondent from distributing, giving, lending, or in any way offering to the Board of Education of the Union Free School District No. 12 any funds of the State of New York allotted for educational purposes, and that the said respondent withhold any such funds and direct any other officials of the State of New York having any authority over the disbursement of state funds to withhold such funds from UNION FREE SCHOOL DISTRICT NO. 12 and from any

agents, servants, or employees of said school district until the said school district has given ample demonstration of its intention to carry out the Constitutions of the United States and of the State of New York, the policy of the State Board of Regents and the said directives of the State Commissioner of Education as applied to UNION FREE SCHOOL DISTRICT NO. 12, and that this Court retain jurisdiction of this action for such purposes; and that petitioners have all other relief necessary to effectuate the foregoing.

and Petitioner requests

2) an order to show cause in the form annexed issue out of and under the seal of this Court; and that a final judgment be made directing the respondent herein to withhold from the Board of Education of Union Free School District Nol 12, Malverne-Lakeview, its share of the public money of the state until such time as the Board of Education shall have in all particulars conformed with the said directive.of the Commissioner.

FOR A FIRST CAUSE OF ACTION

The petitioner above-named, by _____, his attorney, for his petition herein, respectfully shows and alleges that:

1. The petitioner is a citizen of the United States and a Resident of the State of New York, in the village of Malverne, in the County of Nassau and is the parent of a child attending the public schools of the ~~village of Malverne,~~ Union Free School District No. 12, Town of Hempstead, County of Nassau

2. Respondent, James E. Allen, Jr. is the duly appointed Commissioner of Education of the State of New York, and by virtue of such office is the chief executive officer of the state system of education and of the Board of Regents, and is charged bylaw with the power and duties, among other things, to enforce laws and policies of the state educational system and of the Board of Regents; and to withhold public money from districts wilfully disobeying any provision of law, decision, or regulation.

3. Amongst those duties are those set forth in section 305 of the State Education Law:

> "The Commissioner of education is hereby charged with the following powers and duties:
> 1. He is the chief executive officer of the state system of education and of the Board of Regents. He shall enforce all general and special laws relating to the educational system of the state and execute all educational policies determined by the Board of Regents.
>
> 2. He shall have general supervision over all schools and institutions which are subject to the provisions of this chapter, or of any statute ~~xxxxx~~ relating to education, and shall cause the same to be examined and inspected, and shall advise and guide the school officers of all districts and cities of the state in relation to their duties and the general management of the schools under their control."

4. Further powers of said Commissioner of Education are set forth in section 306(2):

> "Said Commissioner of education may also withhold from any district or city its share of the public money of the state for wilfully disobeying any provision of law or any decision, order or regulation as aforesaid."

5. There are three elementary schools in the Union Free School District No. 12 (~~Malverne Union School District~~) in the Town of Hempstead, County of Nassau, including the Woodfield Road School, which has an increasing Negro to white ratio of approximately 75 pe[illegible]

6. On June 14, 1963, defendant James E. Allen, Jr, acting in his official capacity as Commissioner of Education of the State of New York, issued to all Chief Local School Administrators and Presidents of Boards of Education a statement on "Racial Imbalance in Schools which read:

> The State Education Department is constantly seeking to improve policies and practices which will bring about the full operation of the principle of equality of educational opportunity for persons of all social, economic, and cultural backgrounds. In line with this effort and after studying the implications of the 1954 decision of the United States Supreme Court, the Board of Regents adopted and announced in January 1961, a Statement of Policy which contained the following paragraph:
>
> > "The State of New York has long held the principle that equal opportunity for all children, without regard to differences in economic, national, religious or racial background, is a manifestation of the vitality of our American democratic society and is essential to its continuation. This fundamental educational principle has long since been written into Education Law and policy. Subsequent events have repeatedly given it moral re-affirmation. Nevertheless, all citizens have the responsibility to reexamine the schools within their local systems in order to determine whether they conform to this standard so clearly seen to be the right of every child."
>
> The Regents' statement goes on to point out that modern psychological and sociological knowledge seems to indicate that in schools in which the enrollment is largely from a minority group os homogeneous, ethnic origin, the personality of these minority group children may be damaged. There is a decrease in motivation and thus an impairment of ability to learn. Public Education in such a situation is socially unrealistic, blocking the attainment of the goals of democratic education, and wasteful of manpower and talent, whether the situation occurs by law or fact.

[redacted] June 17, 1963, defendant James E. Allen, Jr., acting in his official capacity as Commissioner of Education of the State of New York and as charged by law, issued to the Board of Education of Union Free School District No. 12, Malverne, New York, a directive ordering said Board of Education to reassign pupils within the District so as to improve education within the said school district by achieving better balance of white and Negro children.

8. The directive's proposals, originally recommended as proposal #1 by the Commissioner of State Education's Advisory Committee on Human Relations and Community Tensions, ordered the Union Free School District #12 to:

> Reorganize the attendance areas of the District so that all pupils f

from kindergarten to grade 3 inclusive, will attend either the Davison Avenue or the Linder Place Elementary School; all pupils in grades 4 or 5 will attend the Woodfield Road School. All pupils in grades 6 to 12 will, of course, attend the Junior and Senior High School as they do now.

9. Upon information and belief, on or about October 19, 1966, the Board of Education of Union Free School District No. 12, in order to frustrate said directive and restore the racially imbalanced school system, offered parents within said district the following plan:

1. The public school system should continually move in directions which would encourage normal inter-racial and inter-religious contacts. These contacts are helpful to each pupil to prepare for tomorrow's needs. Arbitrary or aggressive action which is distasteful will not be forced on the school community since it is self-defeating.
2. The school Board will not compel any K-5 pupil to attend any one elementary school in the district. The parents will make the assignment choice, determining whether their children will go to either the Wiidfield Road School, Lindner Place School, or Davison Avenue School, thus exercising their Freedom of Choice. In cases of excessive overcrowding, under-utilization, or special educational classes, the Board will retain this assignment privilege. In cases of overcrowding, it is the Board's determination, and, we beleive, that of our school community, to provide whatever facilities are needed to fully implement the Freedom of Choice Plan. Individual students requesting it will be transferred starting November 1 and the transfer will be completed as soon as administratively and educationally possible.

10. The result of the above plan added by said Board of Education is to abandon the directive of the Commissioner of Education and to replace it with a plan of pupil assignment determined solely by the arbitrary requests of the parents or legal guardians of the pupils, and, in the event of over-or-under-crowding of facilities, the arbitrary determination of said Board of Education

The new system of pupil assignment adopted by the Union Free School Distr[illegible] of Education is a wilful disobeyance of the policy of the State Board of Regents, the law, and is in direct opposition to that system established [illegible] directive of the Commissioner of Education.

The Commissioner of Education is charged by law to enforce his direct[illegible] and to ensure that this directive is put into effect by the Board of Educa[illegible] (the Union Free School District #12,) **tion of ~~Uniondale Schools~~, to this end he is empowered to withold funds [illegible]ny school district whichwilfully disobeys his directive.**

On or about _____, 1966, the petitioner requested the respondent to fulfill his legal duty to enforce his directive and the policy of the State Board of Regents by withholding from the Board of Education of Union Free School District No. 12 its share of the public money of the state.

14. The respondent has failed and neglected to comply with the petitioner's said request and has not fulfilled his legal duty to enforce his special directive, the policy of the Board of Regents, the law ~~and the Constitution of the State of New York~~, related to the educational system of the state.

15. The Respondent's refusal to fulfill his legal duty to enforce both his directive and the policy of the State Board of Regents permits the said school district to receive state funds for the ~~maintenance of a constitutionally~~ educationally deficient racially imbalanced school system; and unless restrained [redacted] ds will continue to be used in such illegal fashion.

16. By reason of the facts and circumstances aforesaid, petitioner w[redacted] be (unless relief herein prayed for is granted) deprived of equal oppor[redacted] without regard to differences in racial background as ordered by the Board of Regents and the State Commissioner of Education of the State of New York.

17. [redacted]tioner is applying for an order to show cause why the respondent [redacted]d not so perform his legal duty and for an order pursuant to S.306(2) of the State Education Law, demanding that the Commissioner of Education withhold from the Board of Education of Union Free School District No. 12 its share of the public money of the state until it complies with the [redacted] of the Commissioner.

SECOND CAUSE OF ACTION

18. The petitioner re-alleges paragraphs numbers one through twelve as if fully set forth herein.

19. Upon a information and belief the Board of Education of Union Free School District Number 12, ~~Malverne-Lakeview~~, added the above-mentioned for amendment to the directive of the respondent with the intention and the purpose of frustrating the said respondent's directive and to recreate and school system, thus instituting a firm form of UFSD #12 imbalance and segregation in the Malverne-Lakeview School District.

20. Such a racially imbalanced bi-racial school system, instituted by law, and maintained by directive, is unconstitutional under the 14th amendment of the Constitution of the United States, and under the decision of the Supreme Court of the United States in Brown v. Board of Education 347 U.S. 483 (1954) and of S. 1983 of Title 42, U.S. Code. and of The Constitution of the State of New York Article I, section 11

21. The distribution of public money of the State of New York and Union Free School District No. 12, ~~Malverne-Lakeview~~, aids and implements the unconstitutional purposes of the ~~Malverne Free School District~~ School District and is, therefore, unconstitutional use of public money.

22. By reason of the facts and circumstances aforesaid, petitioner will be (unless the relief herein prayed for is granted) deprived of equal protection of the law and of freedom from discrimination in his civil rights as guaranteed under the 14th Amendment of the Constitution of the United States, the decision of the Supreme Court of the United States in Brown v. Board of Education, 347 U.S. 483 (1954), S. 1983 of Title 42 U.S. Code, and the Constitution of the State of New York.

23. Petitioner has no adequate remedy at law.

(6)

[redacted] leged in paragraphs numbered [redacted] 2, 3, and 4, the respond[redacted]
power to withhold (state aid) from any school district its share of the public money. The failure of the respondent to exercise this power and to withhold public money (of the state) from Union Free School District No. 12, [redacted], is a direct violation of the Constitution of the United States and the Constitution of the State of New York.

WHEREFORE(e) petitioners respectfully request judgment against respondent, (restraining) enjoining respondent from distributing, giving, lending, or in any way offering to the Board of Education of the Union Free School District Number 12 any funds of the State of New York allotted for education purposes, [redacted] the said respondent withhold any such funds and direct any othe[redacted]

[redacted]s of the State [redacted] having any authority over the disburse[redacted] state funds to withhold such funds from UNION FREE SCHOOL DISTRICT NO. 12 and from any agents, servants, or employees of said school district until the said school district has given ample demonstration of its intention to carry out the Constitutions of the United States and of the State of New York, the policy of the State Board of Regents and the said directives of the State Commissioner of Education as applied to UNION FREE SCHOOL DISTRICT NO. 12, and that this Court retain jurisdiction of this action for such purposes; and that petitioners have all other relief necessary to effectuate the fore[redacted]ing.

WHEREFORE(e) Petitioner requests that an order to show cause in the form [redacted]ssued issue out of and under the seal of this Court; and that a final judgment be made directing the respondent herein to withhold from the Board of Education of Union Free School District No. 12, N-L, its share of the public money of the state until such time as the Board of Education shall have in all particulars conformed with the said directive of the Commissioner.

COPY

IN THE MATTER

of the

Appeal of PATRICIA ANN MITCHELL, et al. against the Board of Education of Union Free School District No. 12 of the Town of Hempstead, Nassau County.

Jawn A. Sandifer, Esq.)
Robert L. Carter, Esq.).....Attorney for Petitioners

Thomas L. Driscoll, Esq.....Attorney for Respondent
Frank X. Altimari, Esq. of Counsel

This is an appeal brought by children attending the public schools in Malverne,-Lakeview, Long Island, Union Free School District No. 12 of the Town of Hempstead, Nassau County, through their parents and guardians, protesting:

(1) The racial imbalance presently existing in the public school system of the Malverne-Lakeview Union Free School District No. 12.

(2) The present plan of transfer of pupils from all grade 6 classes to the new proposed junior high school addition.

(3) The alleged refusal of the Board of Education to change the present zoning plan.

(4) Failure of the Board of Education to equalize the educational standards at the Woodfield Road School with those of the predominantly white schools.

An oral argument was held by me on November 7, 1962, at which the issues were presented by counsel for the petitioners and by counsel for the Board of Education. Following such argument I requested the Commissioner's Advisory Committee on Human Relations and Community Tensions, a three-member Committee established by me to advise and assist on community problems affecting public education, to conduct a special study of the situation in District 12 and to report their findings and recommendations to me in writing.

Exhibit A

The Committee personally visited the district, met with representatives of the petitioners and with representatives of the Board of Education. A report has been made to me, copies of which were furnished the litigants, and a further oral argument has been had by me and further briefs filed.

The facts are these: The Malverne-Lakeview School District is comprised of five schools - a senior high school, a junior high school and three elementary schools - Woodfield Road School, Davison Avenue School and Lindner Place School. There is of course no problem with respect to the senior or junior high school as both schools serve all children of the district. Since this appeal was initiated all sixth grade children have been transferred from the elementary schools to the Junior High School Building.

The record shows that the Woodfield Road School has a Negro to white ratio of approximately 75 per cent and that this ratio is annually increasing. This school is commonly viewed in the community as the "Negro School." Each of the other two elementary schools has a Negro pupil enrollment of approximately 14 per cent.

On the basis of the record before me, including the report of the Advisory Committee, I conclude and determine with respect to each of the petitioners' protests as follows:

(1) Racial imbalance exists in the Woodfield Road School approximately as stated by the petitioners.

(2) The plan adopted by the Board for transferring all grade 6 classes to the Junior High School Building seems reasonable and educationally sound.

(3) The Board of Education has not been arbitrary in establishing or in refusing to change school attendance lines. Although there has been no major revision of attendance lines, recent alterations have placed a number of former Woodfield Road children in the Davison Avenue and Lindner Place Schools.

(4) The educational standards at the Woodfield Road School are not below those of the other two elementary schools. The Advisory Committee reports that - "Many activities have been undertaken by the Board and the Superintendent to raise the quality of education in all schools but more has been done in the Woodfield Road School than in the others."

Having concluded that racial imbalance exists in the Woodfield Road School, the question before me is whether, under the circumstances present in the district, such imbalance constitutes a deprivation of equality of educational opportunity envisioned under the Education Law of New York State for the pupils compelled to attend that school. I find that it does. While the Board's special efforts to improve the quality of teaching in this school are desirable, they do not overcome the disadvantages attached to racial imbalance.

In this regard the general comments and principles enunciated by the Advisory Committee are of interest:

> In contemporary America, race or color is unfortunately associated with status distinctions among groups of human beings. The public schools reflect this larger social fact in that the proportion of Negroes and whites in a given school is often associated with the status of the school. The educational quality and performance to be expected from that school are frequently expressed in terms of the racial complexion and general status assigned to the school. It is well recognized that in most cases a school enrolling a large proportion of Negro students is viewed as a lower status school. It is also true, of course, that an all white school enrolling a substantial proportion of children from culturally deprived homes is frequently considered less desirable.
>
> A cardinal principle, therefore, in the effective desegregation of a public school system is that all of the schools which comprise that system should have an equitable distribution of the various ethnic and cultural groups in the municipality or the school district. Where serious imbalance exists the school with the highest proportion of minority group and lower-status children tends to receive more such children as parents who are able to do so move to neighborhoods and schools of higher status.
>
> A program which seeks an equitable distribution of majority and minority group children in all of the schools of a district offers several advantages. It will enable all children to profit from acquaintance with others of different backgrounds than their own, it will reduce distinctions among schools based on non-educational factors, and will probably stabilize the shifts of enrollment which often follow the arrival of minority group children in disproportionate numbers in a particular school.

The Committee recognizes that long established patterns and community customs are not easily or quickly changed and that psychological and social factors operate on all sides of such a situation as the one now before you. We therefore suggest six principles which seem to us relevant to the whole question of racial balance in the schools.

1. The common school has long been viewed as a basic social instrument in attaining our traditional American goals of equal opportunity and personal fulfillment. The presence in a single school of children from varied racial, cultural, socio-economic, and religious backgrounds is an important element in the preparation of young people for active participation in the social and political affairs of our democracy.

2. In forming school policies every educationally sound action should be taken to assure not only passive tolerance but active acceptance of and genuine respect for children from every segment of the community, with particular attention given to those from minority groups that may have been the objects of discriminatory mistreatment.

3. No action, direct or indirect, overt or covert, to exclude any child or group of children from a public school because of ethnic, racial, religious, or other educationally irrelevant reasons should be taken by any public agency. Wherever such action has occurred, it is the obligation of the school authorities to correct it as quickly as possible.

4. No action should be taken which implies that any school or any group of pupils is socially inferior or superior to another, or which suggests that schoolmates of one group are to be preferred to schoolmates of another. In establishing school attendance areas one of the objectives should be to create in each school, a student body that will represent as nearly as possible a cross-section of the population of the entire school district, but with due consideration also for other important educational criteria including such practical matters as the distance children must travel from home to school.

5. A "neighborhood school" offers important educational values which should not be overlooked. The relation between a school and a definable community with which it is identified can, in many cases, lead to more effective participation by parents and other citizens in the support and guidance of the school. It can stimulate sound concern for the welfare of the school and its pupils and can lead to beneficial communication between the school staff and the community that staff serves

6. When a "neighborhood school" becomes improperly exclusive in fact or in spirit, when it is viewed as being reserved for certain community groups, or when its effect is to create or continue a ghetto type situation it does not serve the purposes of democratic education.

For many years the Regents and the State Education Department have fostered and encouraged better understanding and practice in matters affecting the educational opportunities of minority groups. In January 1960, the Regents adopted a statement of policy on "Intercultural Relations in Education" which reads as follows:

> The State of New York has long held the principle that equal educational opportunity for all children, without regard to differences in economic, national, religious or racial background, is a manifestation of the vitality of our American democratic society and is essential to its continuation. This fundamental educational principle has long since been written into Education Law and policy. Subsequent events have repeatedly given it moral reaffirmation. Nevertheless, all citizens have the responsibility to reexamine the schools within their local systems in order to determine whether they conform to this standard so clearly seen to be the right of every child.

The Regents' statement goes on to point out that modern psychological and sociological knowledge seems to indicate that in schools in which the enrollment is largely from a minority group of homogeneous, ethnic origin, the personality of these minority group children may be damaged. There is a decrease in motivation and thus an impairment of ability to learn. Public education in such a situation is socially unrealistic, blocking the attainment of the goals of democratic education, and wasteful of manpower and talent, whether the situation occurs by law or by fact.

Numerous conferences with local school officials have been held and materials developed and distributed, under the leadership of the State Education Department designed to implement the Regents policy. A racial census of the schools was conducted during the school year 1961-62, and the results of this census were sent to the districts of the State along with suggestions for remedial action in those schools where the ratio of Negros to whites was relatively high.

In the instant case, the Commissioner's Advisory Committee has offered four proposals for improving the racial balance in the elementary schools of the Malverne-Lakeview District:

> (1) Reorganize the attendance areas of the District so that all pupils from kindergarten to grade 3 inclusive, will attend either the Davison Avenue or the Lindner Place elementary school; all pupils in grades 4 or 5 will attend the Woodfield Road School. All pupils in grades 6 to 12 will, of course, attend the Junior and Senior High School as they do now.

(2) Redraw the attendance lines in an East-West direction with the boundaries roughly parallel to each other.

(3) Establish a policy of "open enrollment" for the entire elementary school system.

(4) Transfer approximately 100 pupils from the Woodfield Road School to the other two elementary schools.

The Committee's proposals apply, of course, only to this district. The advantages and disadvantages of each proposal are set forth in their report. They state their opinion that Proposal (1) will do most to satisfy the current complaint of the petitioners.

In its reply memorandum submitted at the second oral argument, the Board rejects all of these proposals and offers no plan of its own to remove the disadvantages of this serious racial imbalance which exists in the Woodfield Road School.

It is my opinion that Proposal (1) is reasonable and can be made to work in the best interests of all the children of the district.

THE APPEAL IS SUSTAINED.

IT IS ORDERED that the Board of Education of Union Free School District No. 12 of the Town of Hempstead, Nassau County, proceed forthwith to prepare a program to make Proposal No. (1) effective on the opening of school this coming September. Such program should be submitted to me not later than August 1. If it should appear that money not already appropriated is needed for capital outlay, in such report the Board shall set forth the necessity and amount thereof.

IN WITNESS WHEREOF, I, James E. Allen, Jr. Commissioner of Education of the State of New York, for and on behalf of the State Education Department, do hereunto set my hand and affix the seal of the State Education Department, at the City of Albany, this 17th day of June 1963.

S E A L

James E. Allen, Jr.

Commissioner of Education

A

REPORT OF COMMISSIONERS ADVISORY COMMITTEE ON HUMAN RELATIONS AND COMMUNITY TENSIONS.

THE UNIVERSITY OF THE STATE OF NEW YORK

THE STATE EDUCATION DEPARTMENT

Advisory Committee on
Human Relations and Community Tensions
John H. Fischer, Chairman
Judah Cahn
Kenneth B. Clark

April 30, 1963

Dr. James E. Allen, Jr.
Commissioner of Education
State Education Department
Albany, New York

Dear Mr. Commissioner:

On November 21, 1963, you asked this Committee to study the situation which had led certain parents ofschool children in the School District of Malverne to file with you a petition in which they stated that the educational opportunities provided their children were inferior to those furnished other children in the same District. The essence of their complaint is that the student body of the Woodfiled Road School is composed predominantly of Negro pupils and that the educational opportunities afforded in that school are therefore inferior.

In accordance with your request we have examined the complaints presented to you and the answers filed by the Malverne Board of Education. We have met twice with the Board of Education and the Superindendent of the District, on other occasions with a group of citizens of the district who held a variety of views on the matter, and with representatives of the plaintiffs. We have visited the district as a whole, each of the neighborhoods, and each of the three elementary schools involved in the petition. We have spent many hours in examining factual data and in discussion the problem and steps by which it might be solved or alleviated.

At our request, the Superintendent had special maps prepared showing the home of each pupil, his race, his school ahd his grade placement. He also provided us with detailed information concerning the enrollment, staff, and program of

Ex. B

each school. The Board of Education and the Superintendent of the Malverne School District have assisted us in every possible way in our study and have responded to our requests for data promptly and fully. They have exhibited genuine concern in the situation and have shown a constant readiness to discuss with us any step toward improvement that might appear promising or feasible.

The Woodfield Road School has been an issue in the community for some time. During recent years referenda for bond issues related to particular school sites resulted in campaigns with racial overtones. In the most recent school board election the race of candidates was widely discussed and is thought to have affected the voting. These incidents underline the fact that tensions related to race are not new inMalverne. The present controversy is clearly related to the fact that the Woodfield Road School is viewed by many white and Negro citizens as a predominantly "Negro" school.

As background for our study we reviewed the major points in the petition presented by the plaintiffs, and theBBoard's response. We give below t our own findings on each item.

PETITIONER COMPLAINT 1

1. Racial imbalance exists at the Wpodfield Road School

   A. Present ratio of Negro to white pupils is 75%; that is segregation.

   B. The lower grades, K-3 are almost all Negro, which means that as years pass the percentage in the school will become increasingly greater.

Board Response

   A. It does not dispute the percentage, but explains that it is due to the fact that Negro residents have moved into the Woodfield Road School area and the Malverne School District has neighborhood schools. Intentional segregation is denied and it is pointed out that 77 of 535 pupils at the Lindner Place School are Negro and that 79 of 573 pupils at the Davidson Avenue School are Negro.

In 1961 pupils from Woodfield Raad School were assigned to the other schools to equalize class size. Negro pupils were among those transferred.

B. The ratio of Negro to white pupils is not increasing in the lower grades; the numbers and percentages are:

Grade	Negro	White	% of Negro Pupils
1	75	30	71
2	70	23	75
3	63	15	81
4	48	26	65
5	62	27	70
6	56	24	70

Committee Findings

The racial imbalance is found to be as stated . There has been a rise of 6% in Negro enrollment since the State census was taken in October 1961.

So far as the Committee was able to determint the total Negro population of thisschool district lives in the attendance area which was originally served by the Woodfield Road School.

Some change in attendance areas was made in 1961 so that pupils from the Woodfield RoadSchool were assigned to the two other elementary schools. This has given the Lindner Place and the Davidson Avenue Schools each a Negro pupil enrollment of about 14%.

PETITIONER COMPLAINT 11

The Board plans tomove all 6th grades to the junior high school, keeping classes intact. This will continue segragated classes in an integrated central school. The Superintendant is reported to have said this will be the policy.

Board Response

If the transfer of 6th grade pupils from each of the

three elementary schools to the junior high school takes place after November 15th, this year's classes will remain intact so as not to disturb pupil-teacher relationships. Next year, however, all 6th grade pupils will be assigned to rooms on an alphabetical basis.

Committee Findings

The 6th grades were moved to new quarters in the junior high school building, Febrary , 1963. The classes from each school were kept intact. Next year pupils are to be assigned to classes on an alphabetical basis. This is the Board's policy and will mean that all 6th grade classes will have pupils from each elementary school. The procedure for both this year and next seems reasonable, and educationally sound.

PETITIONER COMPLIANT 111

The Board did not follow Mr. Theron A. Johnson's reccomendation for a new elementary site, which would have affected integration. It has shown no interest in the recommendation.

Beard Response

Mr. Johnson mad e no recommendation. He was a member of a Department team (report on file in the Department) which made a number of alternate suggestions. With the moving of 6th grade classes out of the elementary schools there is no present need for additional building.

Committee Findings

Neither the complaint nor the response deals fully with the complexities of this question/ At this time the issue is irrevelent.

PETITIONER COMPLAINT 1V

The Board is arbitrary in refusing to change the present attendance lines. Unless the policy is changedWoodfield Road School will remain segregated. It is true that some Negro pupils are attending the other two elementary schools/

Board Response

Denies it has refused to alter attendance lines; 156

pupils, mostly Negro, from what was the Woodfield Road Schhol area now attend the other two schools. This was done as space became available. In addition the Board provides enrichment programs for the Woodfield Road School.

Committee Findings

Although there has been no major revision of attendance lines recent alterations have placed former Woodfield Road children in the other two schools. This was done to equalize class size and to utilize all buildings most effectively.

If racial differenees were not a fact of life in this community, the attendance areas as defined could be cited as an excellent example of administrative planning. They are of suitable size, as compact as possible, and place the majority of children within convenient walking distance of their schools. There are programs of remedial work and enrichment for the Woodfield Road pupils at all grade levels.

The actions of the Board should not be termed arbitrary. In 1961 in response to the community situation the Board transferred students from Woodfield Road to the other two schools. These attempts although helpful have not solved the basic problem which is the existence of a racially imbalanced shool.

PETITIONER COMPLAINT V

There are unequal educational standards at Woodfield Road in comparison to the other two schools.

A. The Superintendent is quoted as saying that achievement scores at Woodfield are"substantially lower."

B. The standards of work required are different from the other schools/

C.

C. The teacher expectations from and motivation of pupils are lower and inferior.

D. There are ineuities inclass size with over-crowding.

E. There is a high dropout rate of Negro pupils from this district as they proceed through the junior and senior high schools.

F. Only 4 of the 168 teachers employed are Negro.

Board Response

Standards for all schools have beem equal for the past 31 years. Courses of study are the same; the standardized tests the same; the money is budgeted strictly on thesame per pupil basis; each school has the same facilities and programs.

A. The Superintendent denies that he has stated achievement is lower at Woodfield Road. Many factors would have to be taken into account to determine the significance of differenees in pupil performance.

B. The standards, cirriculum and programs are the same for all schools.

C. No comment is made on the point of teacher expectation and pupil instruction.

D. There is no significant difference in class size.

E. Since most of the Negro families have moved into the district only during the past five years there can be no anser to the allegation about dropouts. Studies in the senior high school show that o in 1950, the holding power was 90%; for the district in 1962 it was 96%.

F. There are 5 Negro teaches, not 4. The length of service and the amount of experience and training for Woodfield Road is higher than for other schools.

Committee Findings

In our visits to each of the schools we found no evidence of different educational standards. The equality of teaching appeared comparable. Pupil work was exhibited in the same way and the interest of pupils and teachers in class work was uniformly good.

? The Lindner Place School is the newest building and architectuarlly the most attractive. The P. T. A.

appears to have been the most active in providing pictures for the halls, and helping in other ways to keep the building pleasant. The Board and Superintendent are encouraging this activity for the other P. T. A.'s with increasing success.

Class size at Woodfield Road is slightly lower than at the other schools. There is no overcrowding. With the rooms made available by moving all 6th graders to the central school, extra space will be available for special uses.

General Comments by the Committee

For many years the junior high school and senior high school in the Malverne district have been integrated since they are centrally located and serve the entire district. This year all 6th grades were moved to the central school so that now all children in grades 6 to 12 attend classes in the same building. The issue of racial imbalance arises only in the placement of pupils from kindergarten through grade 5.

No evidence was found of any deliberate action by the Board to create artificial school zones in an attempt to contain the Negro school polulation. On the contrary the only change that has been made in long established boundaries resulted in the transfer of Negro pupils from Woodfield Road to the other two schools. Each school has its own character but none could properly be called a poor school in any sense. Although as noted above the Lindner Place School is the newest building and somewhat more pleasing architecturally, the Davidson Avenue and Woodfield Road Schools were constructed at about the same time, and are comparable buildings. Each, however, reflects in its enrollment the residential pattern of the neighborhood. This fact has created the racial imbalance in the Woodfield Road School.

Your committee believes that in the entire complaint there is one basic and real issue. Is the Woodfield Road School a

racially imbalanced school? If it is, then it follows that the social, psychological and educational problems which are ordinarily found in segregated or racially imbalanced schools are present in this situation. Your committee has found that the Woodfield Road School is in fact a racially imbalanced school.

Many activities have been undertaken by the Board and Superintendent to raise the quality of education in all schools but more has been done in the Woodfield Road School than in the others. While these steps are desirable they do not significantly counteract the effect of the racial imbalance. Any action taken to resolve this problem will be effective only if it results in a substantial change in the racial composition of the Woodfield Road student body. This could be accomplished only through a change in the present pattern for assigning elementary school pupils. Racial imbalance could be corrected in one of several ways, some of which would possibly require the introduction of bus service or the creation of lunch room facilities or both. Neither of these services has been considered necessary in Malverne under the existing arrangements.

In considering the petition, the Board's response, the fact we have found, and the possible steps that might reduce or eliminate the reasons for dissatisfaction with the present situation in Malverne, we have kept in mind certain social and psychological factors which are reflected not only in Malverne but in many other communities where racial imbalance in schools is producing controversy.

In contemporary America, race or color is unfortunately associated with status distinctions among groups of human beings. The public schools reflect this larger social fact in that the proportion of Negroes and whites in a given school is often associated with the status of the school. The educational quality and performance to be expected from that school are

frequently expressed in terms of the racial complexion and general status assigned to the school. It is well recognized that in most cases a school enrolling a larger proportion of Negro students is viewed as a lower status school. It is also true, of course, that an all white school enrolling a substantial proportion of children from culturally deprived homes is frequently considered less desirable.

A cardinal principle, therefore, in the effective desegregation of a public school system is that all of the schools which comprise that system should have an equitable distribution of the various ethnic and cultural groups in the municipality or the school district. Where serious imbalance exists the school with the highest proportion of minority group and lower-status children tends to receive more such children as parents who are able to do so move to neighborhoods and schools of higher status.

A program which seeks an equitable distribution of majority and minority group children in all of the schools of a district offers several advantages. It will enable all children to profit from acquaintance with others of different backgrounds than their own, it will reduce distinctions among schools based on non-educational factors, and will probably stabilize the shifts of enrollment which often follow the arrival of minority group children in disproportionate numbers in a particular school.

The Committee recognizes that long established patterns and community customs are not easily or quickly changed and that psychological and social factors operate on all sides of such a situation as the one now before you. We therefore suggest six principles which seem to us relevant to the whole question of racial balance in the schools.

1. The common school has long been viewed as a basic social instrument in attaining our traditional American goals of equal opportunity and personal fulfillment. The presence in a single school of children from varied racial, cultural, socio-economic, and religious backgrounds is an important element in the preparation of young people for active participation in the social and politican affairs of our democracy.
2. In forming school policies every educationally sound action should be taken to assure not only passive tolerance but active acceptance of and genuine respect for children from every segment of the community, with particular attention given to those from minority groups that may have been the objects of discriminatory mistreatment.
3. No action, direct or indirect, overt or covert, to exclude any child or group of children from a public school because of ethnic, racial, religious, or other educationally irrelevant reasons should be taken by any public agency. Wherever such action has occurred, it is the obligation of the school authorities to correct it as quickly as possible.
4. No action should be taken which implies that any school or any group of pupils is socially inferior or superior to another, or which suggests that schoolmates of one group are to be preferred to schoolmates of another. In establishing school attendance areas one of the objectives should be to create in each school, a student body that will represent as nearly as possible a cross-section of

the population of the entire school district, but with due consideration also for other important educational criteria including such practical matters as the distance children must travel from home to school.

5. A "neighborhood school" offers important educational values which should not be overlooked. The relation between a school and a definable community with which it is identified can, in many cases, lead to more effective participation by parents and other citizens in the support and guidance of the school. It can stimulate sound concern for the welfare of the school and its pupils and can lead to beneficial communication between the school staff and the community that staff serves.

6. When a "neighborhood school" becomes improperly exclusive in fact or in spirit, when it is viewed as being reserved for certain community groups, or when its effect is to create or continue a ghetto type situation it does not serve the purposes of democratic education.

With these principles in mind, we offer below four proposals for change, stating the advantages and disadvantages of each.

PROPOSAL I

Reorganize the attendance areas of the District so that all pupils from kindergarten to grade 3, inclusive, will attend either the Davidson Avenue or the Lindner Place elementary schools; all pupils in grades 4 and 5 will attend the Woodfield Road School. All pupils in grades 6 to 12 will,of course, attend the junior and senior high school as they do now.

Advantages

1. The above proposal is an extension of the policy which the Board of Education has already estab-

lished in bringing together, this year, all 6th grade pupils into one building.

2. There will be no "Negro" school. Each school will enroll approximately one-third Negro pupils and two-thirds white pupils. Neither stigma nor status related to race will be associated with any school.
3. No one part of the community is affected more than any other part. The younger pupils in the present Woodfield Road district would have a somewhat longer distance to travel to school; the older pupils in the present Davidson Avenue and Lindner Place districts would also have a somewhat longer distance to travel.
4. According to the statistics furnished us by the School Board this solution is physically feasible. Each school can accommodate the number of children in the grade division as suggested.

Disadvantages

1. Some children will travel a longer distance to school than they now do.
2. It introduces one additional school transfer for children in the district. Pupils now attend one school from kindergarten to grade 5, and a second for grades 6 to 12. This proposal introduces a third move at grade 4.
3. More pupils than at present will need to cross Ocean Avenue, a main Street in the community.

PROPOSAL II

Redraw the attendance lines in an East-West direction with the boundaries roughly parallel to each other.

Advantages

1. By careful establishment of attendance areas the proportion of Negro children to white children can

be lowered in the Woodfield Road School and raised in the other two schools.

2. The plan preserves elements of the "neighborhood school" for many pupils.

Disadvantages

1. It will probably not change the perception of the Woodfield Road School as the "Negro" school and, therefore, will not settle the issue.
2. To obtain the best possible balance in the student population and yet minimize walking distances some irregularity of attendance lines will be required.
3. If or when population changes come about through a change in residential pattern, attendance areas will need alteration to maintain a balance in enrollment.

PROPOSAL III

Establish a policy of "open enrollment" for the entire elementary system.

Advantages

1. The pressure which some parents feel when they are forced to have their children attend a certain school will be relieved.

Disadvantages

1. It does not meet the issue of a "Negro" school.
2. The ratio of Negro to white pupils in each school would remain practically the same as at present. Most parents of white pupils would be unlikely to choose the option to transfer to Woodfield Road, Very few parents of Negro pupils ordinarily use an "open enrollment" option.

PROPOSAL IV

1. Transfer approximately 100 pupils from Woodfield Road to other two elementary schools.

According to a memorandum to the Committee from the

Malverne School Board, the shifting of the 6th grades to the Junior High School has resulted in the transfer of 73 students out of Davidson Avenue, 76 out of Lindner Place and 82 students out of Woodfield Road. By utilizing two-thirds of the space thus gained in the Davidson Avenue and the Lindner Place Schools, it would be possible to transfer 100 students from the Woodfield Road School to the other two schools, or about 50 to each school. This would bring the ratio of Negro students in the Lindner Place and Davidson Avenue Schools to about 25% and Lower the Woodfield Road School ratio to about 70%. (The Negro students represent approximately 33% of the total student population of the District.)

Advantages

1. It would create a better balance especially in the two now predominantly white schools.
2. It would make the class size smaller in the Woodfield Road School and permit the introduction of additonal special services.
3. The plan preserves elements of the "neighborhood school" for many pupils.

Disadvantages

1. The Woodfield Road School would remain the predominantly "Negro" school in the community.

It is the opinion of your Committee that of all the solutions to the Malverne situation that we could identify or devise, Proposal I will do most to satisfy the current complaints of the petitions.

The Board of Education requested they have the opportunity to submit a statement to us to be included in any report to you. A copy of this statement was received and is attached as part of our report.

Sincerely,

From Commr. Allen's order to Malverne S.D. dated 6/17/63:

"It is my opinion that Proposal (1) is reasonable and CAN BE MADE TO WORK IN THE BEST INTERESTS OF ALL THE CHILDREN IN THE DISTRICT.
The appeal is sustained.
It is ordered that the B. of Ed.of UFSD #12 of the town of Hemp., Nassau Cty proceed forthwith to prepare a program to MAKE PROPOSAL # 1 EFFECTIVE on the ....."

It is our contention that the present schl brd is now and has always been in defiance of the above order. That it has never desired or claimed to desire to "make Proposal (1) work in the best inetrests etc. That it has repeatedly in public proclaimed its intention to destroy the order and has taken every conceivable action to sabotage the order. We claim that it is the board's intent to prove that neither this order nor any similar order can work - and to establish a pattern for community resistance to such orders.

Further, we contend that Malverne is the focal point of efforts of anti-integration forces thruout the state (and beyond) to prove that such orders cannot work. We know of involvement in this effort by Conservative Party figures (Mason Hampton), and strongly suspect JOHn Birch participation.

We contend that the sabotage program carried on by the Malverne Schl Bd. to date has been very successful: The Press has carried frequent and exaggerated reports that now all of dist 12 is racially imbalanced as a result of the Allen order, and that white parents are continuing, for this reason, to withdraw their children from the schl dist. Further, that Negro parents are becoming discouraged because their children have only moved from a segregated school to a segregated classroom. Further, that the inconvenience imposed by lack of transportation is discouraging enthusiasm for the plan - ALTHO FUNDS FOR SUCH TRANSPORTATN WERE OFFERD BY THE STATE AND WERE REFUSED.

We have grave fears that if the present appearance of failure of the Allen Order is not speedily corrected- no Commr. of Ed. will dare to issue another such ordr. Further, that schl districts now preparing plans for voluntary integration under the threat of Dept. of Ed. order, will realize that there is no necessity to pursue these preparations.

Commr. Allen is under court order (Judge Pennock) to "implement his own order" It is not being implemented.
It will never be implemented by the present schl. bd., nor by any schl. bd. elected by any presently possible majority of dist. 12 voters.

In order to implement his order, Commr Allen must remove the Schl Bd and appoint a new board.

The Press Endorsements In the State Races

See Editorials on Page 22

Long

NASSAU No. 4079

Schoolmen Invoke 'Free Choice' Plan For Malverne Kids

By VINCENT O'BRIEN

The Malverne School Board last night adopted a "free choice" plan for elementary school pupils which its members admitted may lead to their ouster by State Education Commissioner Dr. James E. Allen Jr.

Although claiming the free choice plan "supplements" Allen's racial balance order, Charles Reardon, school board president, conceded that board members are "concerned" about their possible removal.

The new district policy was announced after an executive session that followed a brief but bitter and boisterous open meeting at which Negro neighborhood school advocate, The Rev. E. Freeman Yearling of Lakeview, was named to the board.

* * *

BEFORE THE Rev. Mr. Yearling's appointment was a minute old, Lincoln Lynch of Lakeview, associate national director of CORE, was heading for the microphone to protest, over 200 white parents in the audience began hooting him and police were asked to come and keep the peace.

To round out the night's events, it was disclosed that the board's newly-appointed member has been relieved of his ministerial duties by the Metropolitan Baptist Church in Manhattan because of his civil rights views.

And a local NAACP member announced that the state NAACP intends to sue the school board for its "improper replacement" of board members.

Last night's meeting began quietly enough as Reardon announced the board had selected a new district superintendent to replace the late Dr. Howard T. Herber. He said he could not name the board's choice because he had not been notified of his selection yet.

* * *

REARDON THEN entertained a motion to appoint the Rev. Mr. Yearling and Cloyd Aarseth of Malverne, a communications executive,

(Turn to Next Page)

Nickerson Backs LI Cleanup

The Press "Clean Up Long Island" campaign is receiving the personal attention of Nassau County Executive Eugene H. Nickerson.

He's replying personally to each of the hundreds of Nassau residents who complained to The Press of "eyesores" in their neighborhoods.

The complaints — along with suggestions to solve problems of unsightly and unsanitary conditions—were turned over to Nickerson last week.

They were spurred by The Press Spotlight series last month on "Ugly Long Island," which concluded with a call to Long Islanders to send in post cards outlining their complaints and suggestions.

* * *

NICKERSON, who called the series "a great public service," said he hoped some of the ideas could be implemented in future beautification projects.

Many of the suggestions came from residents concerned with local sanitary or littering problems. In those cases, Nickerson is telling the writers that he's ordered inspections by the proper county departments.

"Earlier this year," Nickerson replied, "we set up a system which we hope will overcome the problems that face any major improvement."

He added, however, that a major difficulty stems from the fact that "we cannot do much where the mess is on private property."

"However, I have asked our new Nassau County Office of Mobilization for Democracy to establish a program of mutual help," Nickerson said, adding that many civic groups have agreed to cooperate.

Australia Welcomes Johnson

CANBERRA, Australia (AP) — President Johnson arrived in Australia today for an enthusiastic welcome after getting a pledge of Allied unity from New Zealand and calling on Hanoi's leaders to join in a "nobler war" on hunger, ignorance and disease in Southeast Asia.

The weather cooperated fully for the coming of the first American president to visit Australia. A light rain stopped 10 minutes before the presidential jet landed in Canberra, the capital, and brilliant late afternoon sunshine slanted through the dark gray thunderheads as Johnson, followed by his wife, stepped from the plane to be greeted by Prime Minister Harold Holt.

* * *

HARKING back once again to his World War II visit to Australia and New Zealand as a naval officer Johnson told the welcoming crowd at the airport he had returned — en route to the Manila Conference on Viet Nam—on a mission of hope.

"I cannot say that miracles will occur at Manila," he declared. "The hard work of securing the peace is not done by miracles."

"I cannot say that the hunger and injustice of the past will be ended by a declaration of the seven nations (including Australia) who will meet next week.

"Years must pass, years of dedication and patient effort, before men can make the just society of which they dream."

Johnson declared that there is a new vision, "a new hope," in this vast area of the world.

* * *

"IT IS a vision of emancipation—from foreign domination, from tyranny, from the despair that rides with hunger and disease and ignorance. It is the only vision worthy of man's destiny. We shall try to capture a part of that vision at Manila."

A crowd of about 400 that had braved the chilly weather and earlier rain cheered loudly and clapped during the President's speech.

O'C: In DA

Schoolmen Invoke 'Free Choice' Plan for Malverne Kids

(Continued from Page 1)

to the two vacant board seats.

In a matter of seconds the motion was passed and Lynch was on his way to the stage.

Lynch stormed onto the stage, grabbed a microphone and began an exchange with Reardon, which was drowned out by the shouts of over 200 white parents.

Reardon responded by asking for a motion to adjourn. It passed quickly and the board walked past the angry CORE director and off the stage.

* * *

AS THE BOARD left one Negro shouted: "If you're looking for violence you're headed the right way." Others surrounded the Rev. Mr. Yearling as he tried to join the rest of the board. They demanded he "use the other door" and "walk the way the white folks walk."

The Rev. Mr. Yearling finally went through the door with his wife to join the rest of the trustees for the swearing-in ceremony and an executive session behind closed doors.

Lynch, not wanting to be denied an opportunity to speak to the minister and the other board members, tried to follow.

He was turned back by a custodian who said: "I have instructions not to let anyone through here. The board meeting is not open to the public."

* * *

LYNCH TRIED to push his way past the custodian but was held back. "You can't tell me what to do," he said as he pushed the custodian, who fell to the floor.

The custodian scrambled to his feet and held the door closed from the inside.

Shortly thereafter Malverne Police Chief Vincent Ryder and three patrolmen arrived.

A white man walked up to one of the patrolmen and announced that Lynch "spat in my face. If I see him I'm going to fracture his skull."

* * *

RYDER SAID the board asked him to let people remain if they insisted, but to try to get as many out as possible.

Lynch was then in the rear of the auditorium, where a group of about 50 whites still lingered. As they heckled him he screamed repeatedly, "You are pigs."

Lynch then returned to the front of the Herber Junior High School auditorium, where Ewell Finley, Lakeview NAACP member, and the Rev. Bennie E. Whiten, chairman of the United Committee for Action Now, had begun an informal meeting with the nearly 100 Negroes who stayed behind.

Lynch called the three elected board members "fascists masquerading as school board members" and, referring to the Rev. Mr. Yearling's appointment, asked: "Which gutter in Lakeview did they drag this thing out of?"

* * *

LYNCH SAID each Negro must renew his pledge to "continue to fight for good education for our children." He said the only difference was that "now we must fight one of our own."

Finley then announced that the state NAACP will bring a suit against the school board's "improper replacement" of board members.

Earlier in the evening Lakeview citizens circulated a petition outside the school deploring the Rev. Mr. Yearling's appointment. they had 60 signature by the time the meeting began.

Lynch then took the floor again and charged that the Malverne and Lynbrook people "have killed education with the three racists on the board, and that black Benedict Arnold in a Roman collar performed the rights.'

* * *

THERE WERE NO outbreaks other than heckling between Negroes and whites during the evening and no arrests were made.

One white resident also addressed the group of Negroes. He was Rabbi Samuel Chiel of the Malverne Jewish Center.

Rabbi Chiel said he agreed with Lynch's indictment, but added that "there are enough people in Malverne and Lynbrook who will throw out the board for misleadership because they, too, care about education."

* * *

SHORTLY AFTERWARD the impromptu meeting broke up and the auditorium cleared quietly.

Reporters were then admitted to the superintendent's office, where the board had just finished its executive session.

Sitting among a full board for the first time since he took office in June, Reardon quietly announced the school board's adoption of the free choice plan.

Under the plan, parents of children in kindergarten through fifth grade can request transfers to schools other than those they now attend.

* * *

REARDON SAID the new plan would be implemented gradually and on a limited basis at first, according to the space and educational facilities available. It will go into effect on or about Oct. 31, he said.

He pointed out that a recent racial census of the district indicated that the Albany plan failed to racially balance the schools.

He sad the survey showed that there was a 57 per cent Negro and 43 per cent white enrollment in grades one through five.

Reardon explained that the free choice plan was designed to please both the Negroes and whites in the district "because parents can send their children to whatever schools they want."

* * *

REARDON said a survey of parents — to determine how many would request a change and to what schools they wanted their children sent—indicated there would be no sudden overcrowding at any of the schools.

If overcrowding did occur, he said, the school board would provide whatever facilities are required to fully implement the new plan. He said a detailed analysis of the plan had not been worked out, but should be available in about two weeks.

Asked if student transfers might result in empty classrooms, Reardon replied:

"Hypothetically speaking, if all the fifth grade students wanted to go from one school to another, and if we had the facilities and teachers to accommodate them, the resulting empty classrooms would be the price we have to pay under the free choice plan."

Reardson said the school board will notify Allen of the change by mail. He said the letter already has been prepared, but he would not reveal its contents until the commissioner receives it.

Allen has the power to remove the board if he feels his racial balance plan is not being carried out.

them what these people are doing to deny the freedom of other people to send their children to a neighborhood school."

He also disclosed plans to build a church in Lakeview, where he lives at 961 Orlando Ave. He said a fund-raising drive for the church, to be known as the Long Island Missionary Baptist Church, is already underway.

The Rev. Mr. Yearling stressed that the Rev. Mr. Stamps' action does not invalidate his ministry. He said the statement of his ordination, signed by the Rev. Mr. Stamps, is still valid, as is his membership in the Minister's Conference of Greater New York.

EST. 1940
Robert Hall
OPEN 9:30 'TIL 9:30
AMERICA'S LARGEST FAMILY CLOTHING CHAIN

the free choice plan.

Reardson said the school board will notify Allen of the change by mail. He said the letter already has been prepared, but he would not reveal its contents until the commissioner receives it.

Allen has the power to remove the board if he feels his racial balance plan is not being carried out.

* * *

ALTHOUGH REARDON admitted the board was "concerned" about the possibility of removal, he said it intends to "serve the people and return to the quality of education the district enjoyed" before the Allen plan was implemented.

He said that since the freedom of choice plan was "based on the soundness of education" he could "see no reason why he (Allen) wouldn't go along."

Asked if the new plan could lead to its own racial imbalance, Reardon replied, "I can't be a prophet and guess what the balance outcome would be."

The Rev. Mr. Yearling received news of his relief from ministerial duty Sunday in a letter from the Rev. C. S. Stamps, his pastor and the president of the Progressive State Baptist Convention.

* * *

THE REV. MR. STAMPS wrote:

"Because the Metropolitan Baptist Church stands firmly behind Dr. Martin Luther King wholeheartedly in his fight for equal rights and equal opportunity in schools, housing and everything that goes with it and all other organizations that are fighting for equal opportunity for the Negroes in America, the pastor therefore terminates the ministerial service of the Rev. E. Freeman Yearling as being associated in any form as a part of the ministry of this church.

"Therefore whatever opinion he has and whatever he states publicly or privately does not express the thinking or wishes of the church in any form.

"Therefore the name of the church is not to be used in any way in connection with his speeches or writing."

* * *

THE REV. Mr. Yearling lashed out at his former pastor, accusing him of "intervening on behalf of the civil rights leaders in this community. They are well aware of the action he has taken."

The minister said he was being "persecuted" by his own church "because I am not in tune with King's thinking."

The Rev. Mr. Yearling said he intends to "supply every minister in the country with a copy of the Rev. Mr. Stamps' letter to show

(First class mail)
Mailed to "occupant" thereof
School district: regardless of address.
Children of appropriate age level at address.

BOARD OF EDUCATION
UNION FREE SCHOOL DISTRICT NO. 12
MALVERNE, NEW YORK 11565

September 29, 1966

Dear Parent:

As you know, the Board of Education of Union Free School District No. 12 has instituted the racial balance plan ordered by Commissioner of Education, James E. Allen.

This plan, designed to balance races in our school system and ease community tension has failed drastically in its objective. In addition, because of inadequate facilities created by the order, the children of our schools are not receiving the art, music, and physical education programs which they previously received.

A current census taken on September 19, 1966 discloses that the enrollment in grades one through five is 57% non-white. This is an increase of 7.4% in non-white enrollment since October 1965. The total percentage of Negro enrollment has increased 22.5% since the first census taken under the order of Commissioner Allen in 1961.

Since the Board is charged, by law, with the responsibility for the education of all children within the district, they are presently considering the alteration of the ordered pupil assignment plan, in order to restore faith in our public school system. This alteration will be designed to attract back to the public schools the many children removed from that system. A "Freedom of Choice" plan is one of those under consideration.

If you, as a parent, had the opportunity to transfer your child in grades kindergarten through fifth grade to a school other than the one he now attends, please fill in, sign, and return the attached survey blank so that it is received not later than October 10, 1966. Should you decide that you would not wish a transfer, it is not necessary to return the questionnaire.

- -

I request that my child _____ in grade _____

presently enrolled in _____ be assigned to
school

_____.
new school

_____
Signature

_____
Date

Return to:
Board of Education
Howard T. Herber Junior High School
Ocean Avenue
Malverne, New York 11565

February 23, 1964 (Revised)

A SPECIAL MEETING of the Malverne Board of Education was held on Sunday, February 23, 1964, in the Board Room of the Malverne Junior High School, Ocean Avenue, Malverne, New York.

The meeting was called to order at 10:00 a.m.

Present: Trustees DeNoie, Bejarano, Hook, Murphy, Nasierowski

Also Present: Supt. of Schools Herber, Asst. Supt. for Business Wolff

It was moved, duly seconded, and unanimously carried that the following resolution be adopted:

Whereas, the Board of Education is cognizant of the fact that some residents of the School District desire to participate more fully in an effort to improve racial balance, and

Whereas, as a result of recent court decisions the involuntary transfer of children for the sole purpose of achieving racial balance is of dubious legality, and

Whereas, all pupils in Grades 6, 7, 8, 9, 10, 11, and 12 are now integrated in common buildings, therefore

BE IT RESOLVED that for the school year 1964-65 a reciprocal student exchange plan be instituted for the remaining elementary grades (kindergarten through 5,) with these general provisions.

A. A parent of a pupil in attendance at either Davison Avenue or Lindner Place Schools may voluntarily apply to have his child attend Woodfield Road School.

B. Similarly, a parent of a pupil ~~living in the area served by the~~ in attendance at Woodfield Road School may voluntarily apply to have his child attend either Lindner Place School or Davison Avenue School.

C. The request for such transfers must be filed in the office of the Superintendent of Schools by May 1, 1964.

D. The vacancies created by the voluntary change of attendance of pupils from Davison Avenue School and Lindner Place School will be filled by pupils of the same grade level from Woodfield Road School whose parents have voluntarily made such requests. In case there are more such voluntary requests for assignment from one school to another on a particular grade level than the reciprocal requests, consideration will be given to geographical proximity to the receiving school as well as attendance of other children in the same family. (For example, if there were requests for four pupils in Grade 3 to be changed in assignment from Davison Avenue to Woodfield Road and voluntary requests for six Grade 3 pupils to be assigned from Woodfield to Davison then the four pupils from Woodfield area would be selected on the basis of proximity and attendance of other members of the same family.)

E. Parents will agree to assume the responsibility for the regular attendance of the pupils at the school to which assigned. Since the voters of the School District have not approved payment of transportation within the district, the Board of Education does not have authority to provide transportation.

It was moved, duly seconded, and unanimously carried that Salary Guide "B" Relating to Teachers, effective July 1, 1964, approved on February 9, 1964, be rescinded.

It was moved, duly seconded, and unanimously carried that Salary Guide "C" Relating to Teachers, effective July 1, 1964, be adopted.

On motion duly made, seconded and carried unanimously, the meeting adjourned at 12:45 p.m.

Clerk

SEDFRE

Omal Realty vs Colon, Pedro et al (Housing Violation)

Sept., 1964 - Jan., 1965

Box 41
Folder 20

Historical Society of Wisconsin

Please Retain Original Order

2

Memo: On the possibilities of giving Mortgagees a Right or duty of correcting building violations

Nancy Kramer
Law Students Civil Rights Research Council

Building violations too often remain uncorrected. The laws available to compel enforcement are apparently either inadequate or inadequately employed. The 1962 Receivership Law, Multiple Dwelling Law &309, as amended by L 1962, ch 492, seemed to be an answer to this problem. But, possibly because of qualms about the constitutionality of the law (recently held to be constitutional by the Court of Appeals in Department of Buildings v Philco, unpublished opinion 107), more probably because of the cumbersomeness of the procedures involved, the law is infrequently invoked. A solution to be considered is the imposition of a duty or a workable right to correct violations to be given to the mortgagee of a sub-standard building.

The typical mortgage has a clause which provides that the whole of the principal sum shall become due, at the mortgagee's option if the building is not maintained in reasonably good repair or after failure to comply with any requirement, order, or notice of violation issued by any governmental department, within three months from the issuance or if the mortgagor breaches any of the other covenants or agreements of the mortgage. HARVEY, REAL ESTATE LAW AND TITLE CLOSING (3d ed. 1956) p 593. This clause would seem to give the mortgagee the power of having building violations corrected, by the threat or the actuality of foreclosure. However, as the foreclosure process in New York State is lengthy and involved, this is not a working clause.

Would it be possible to increase the occurrence of mortgagee prevention and correction of building violations by providing a more feasible means of enforcing the clause? Can foreclosure be streamlined? Should another remedy be made available? Should the mortgagee's option be made his duty? If so, should or could this be done by state legislation? By N.Y.C. legislation? What effect would the imposition of such a duty have on mortgage-lending? What other clauses are there in standard mortgages that could be utilized? These are the questions which this memo will consider.

The multiple dwelling law § 78 makes the "owner" of a building responsible for compliance with its provisions (with the exception of violations caused by tenants or their relatives or guests). "Owner" has been strictly construed as applying only to the person in actual possession and control of the premises.

McGowan v Morgan, 160 App. Div. 588, 145 NYS 787 (1st dept. 1914)
King v 690 and 2 Realty Corp. 153 Misc. 619, 275 NYS 753 (Supr. Ct App. Term 1st dept. 1934)
Cohen v Home Title Ins. Co. 2 NYS 2d 245 (Supr Ct. Term 1938)

As the multiple dwelling law stands now, the mortgagee has no responsibility for compliance with its standards. However, § 304 provides that "every person who shall violate or assist in the violation of any provision of this chapter shall be guilty of a misdemeanor". Conceivably a court could construe a mortgagee's failure to exercise his option to demand the principal as an "assistance" in the violation of the multiple dwelling law. So far no court has even suggested this possibility and strong weight against it is the maxim of strict construction of laws in derogation of the common law. (At common law the duty to repair premises was the tenant(s.)

There is no doubt that the state could impose such an obligation on the mortgagee (probably by an amendment to the Multiple Dwelling Law). Housing being a subject related to the welfare of the public state legislation in this area has consistently been validated, even when the legislation impaired existing private contracts

Manigault v Springs, 26 Sup. Ct. 127 (1905)
Home Building & Loan Ass'n v Blaisdell, 54 Sup. Ct. 231 (1933)
Tenement House Dept. v Moeschen, 179 N.Y. 325, 72 NE 231 (1904)
Durham v La Fetra, 230 N.Y. 429, 130 NE 601 (1921)

On point are the words of Justice Fuld in a very recent case:

> "When...multiple dwellings become unfit for use and a source of danger, the State may enact legislation reasonably aimed at correcting the situation and promoting the public welfare, even though the means devised to accomplish that result may impair the obligation of the mortgagee's contract..."

Department of Buildings of the City of N.Y. v Philco Realty Corp. No. 107 Court of Appeals, 1964

The state's right to act in this area and to change existing leases & mortgages is valid as an exercise of "police power". (See all cases, supra). This police power was reserved to the states (specifically, to their legislatures) at the time the constitution was written and, consequently need not have been specifically "granted" to them. 11 A.M. JUR. Constitutional Law I 969 (1937).

The city, a mere political subdivision of the state, has no such power. The state legislature acts supremely in the designation of the powers of municipal corporations.

MacMullen v City of Middletown, 187 NY 37, 79 NE 863 (1907)
Lotter v Westchester County Park Commission, 186 Misc. 377, 63 NYS 2d 208 (Supr. Ct. Spec. Term Westchester County 1946)

It has been held that the state may delegate police power to a municipality,

Tysco Oil Co. v R.R. Comm of Texas 12 F. Supp 202 (S.D. Tex.1935)
Atchison, Topeka, & Santa Fe Ry. v City of Chicago 136 F. Supp 476 (N.D. III, E.D. 1955)

but, the relevant cases involve a specific state delegation of such power.

Has a specific delegation of police power been made to New York City? Apparently not, neither the Municipal Home Rule Law (nor its predecessor the City Home Rule Law) nor the N.Y.C. Charter speaks of a "police power."

Lacking a specific delegation, can such delegation be inferred? Both the Municipal Home Rule Law (Art. 2 § 10 (1) ii) and the charter (§ 27) contain language sufficiently broad to draw such an inference Both provisions indicate concern for the public welfare and an intent that NYC have the power to make and enforce laws in the interests of the public welfare. Purely as a matter of statutory construction, a delegation of the police power necessary to impose a duty on mortgagees could be implied. However, there is a major obstacle to making such an inference.

In earlier cases, the federal constitution's provision that "No state shall... pass any... law impairing the obligation of Contracts" (article 1 § 10 cl. 1) was repeatedly invoked, unsuccessfully, to oppose the state's right to pass various housing, rent control, and allied legislation. The 1905 holding of Manigault v Springs, supra, that a state may exercise its police power for the public good, notwithstanding previous individual contracts was re-iterated by the declaration of Home Building & Loan Ass'n v Blaisdell, supra, that the contract clause of the Constitution must be construed in harmony with the reserved power of the state to safeguard public interests. New York cases followed suit. Health Dept v Rector, 145 NY 32, 39 NE 833 (1895), Guttag v Shatzkin, 230 NY 647, 130 NE 929 (1921), and Durham v La Fetra, supra. These cases all emphasize the state's inherent police power as the basis for legislation which affects existing contracts and it seems clear that, absent such power, the legislation would not have been validated.

It is settled law that a municipal ordinance does constitute "state action" within the Constitutional prohibition against the impairment of the obligation of contracts.

New Orleans Waterworks Co. v Louisiana Sugar Refining Co.
8 Sup. Ct. 741 (1887)
Mercantile Trust & Deposit Company v City of Columbus
27 Sup. Ct. 38 (1906)
Pudlik v Public Service Co. 166 F. Supp. 921 (D.C. Colo. 1988)

But, there is no authority for the proposition that municipal legislation that could be validated only under the head of "police power" could be sustained by a merely implied delegation of the vital power. Because the prohibition is one of the federal constitution, it is not likely that exceptions to the clause will be liberally extended.

Therefore, there being no express delegation of the police power necessary to sustain a New York City law imposing a duty on mortgagees to correct building violations, there being little chance that an inference of such power could be sustained, and there being no other justifiable basis (to the best of my knowledge) for such a law as exception to the impairment of contracts prohibition, it does not seem constitutionally possible to pass such a law. Of course, the bill could be made non-retrospective, but, in light of the immediacy of the problem and the number of long-term mortgages, this would not be a very effective solution.

An actual bill dealing with this problem was introduced in the New York State Assembly in 1963 (& 1962, 1961) by William Passante. It read:

"AN ACT TO AMEND THE MULTIPLE DWELLING LAW, IN RELATION TO FORE-CLOSURE OF A MORTAGE WHEN VIOLATIONS ARE NOT RE* MOVED WITHIN THREE MONTHS

* * * * *

304-a Foreclosure because of violations. Where a violation is placed on a multiple dwelling by an agency of government the agency shall send notice thereof to every mortgagee of record. If the violation is not substantially removed from the multiple dwelling within three months after receipt of notice it shall be the duty of the mortgagee to enforce any option in existance to demand immediate payment of the balance of the mortgage due and in case of default to forthwith proceed to foreclose the mortgage. A mortgagee who violates this duty shall be guilty of an offense.

Referred to the Committee on the Judiciary, the bill never left committee, so there is no record of reaction to it.

However, the Community Service Society published a memo (in 1963) opposing the bill*, in which it raised, although did not discuss, several major objections. The practical problems of

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*(footnote) the C.S.S. indicated to me, informally, that it's view might be different now, but has published no supplementary memo to that effect.

administration; the burdening of the overworked building department and the impossibility (with no indication of why this should be so) of enforcement were found insurmountable. The Society thought unjust the absence of any provision for allocating the rights and responsibilities as between several mortgagees and felt that the primary responsibility in enforcing the Multiple Dwelling Law should not be on the first mortgagee. (which seems to be a misreading of the intent and effects of the proposal which would make the mortgagee's role subordinate to that of the "Owner" who is given three months in which to act and is still punishable for his non-compliance.) In addition, the C.S.S. thought the receivership and lien law, supra, sufficient affirmative means of maintaining building standards and an adequate penalization of mortgagees disinterested in the condition of buildings (providing, as it does, that no rents, issues, or profits of a violation-marked building shall accrue to the mortgagee, but rather shall be diverted to the city receiver to defray the cost of correcting the violation), despite its lengthy procedure and rare invocation. The Society's final and probably most significant objection is that the imposition of criminal sanctions might discourage mortgage-lending (and thereby prevent owners from getting money necessary to make repairs.)

Is is this consideration, the discouragement of mortgage-lending, that would probably be a major obstacle to the passage of such a bill. Mr. Passmante told me that he had the assurance of bank representatives that they had no objections to such a bill and felt that only court reluctance to enforce the standard mortgage clause (supra) prevented mortgagees from foreclosing mortgages for building violations. My experience with bank people was quite different. American Irving Savings Bank representative Mr. Fisher

characterized the proposal as "all wet", emphasizing that the legislature had already "gone overboard" on the subject of building violations. He thought it difficult enough to take out a good mortgage loan, which difficulty would be increased by the bill. In addition, Mr. Fisher said that the standard mortgage clause option of foreclosure Is useful and is acted on whenever necessary.

The Savings Bank Association of New York State had no official opinion, the bill never having left committee, but Mr. Castillio was able to give me an informed informal opinion. He stressed the willingness of mortgagees to cooperate in finding a way of correcting building violations (it being to their benefit to have the property maintained.) However, he felt that the Passanante proposal was not the answer, because of the imposition of criminal punishment to effect a civil duty. His personal experience as a prosecutor (assistant U. S. attorney in southern district of N. Y.) had taught him that prosecutors regard this type of offense as not worthy of punishment, which would make enforcement very difficult. He felt also that mortgage lending would be greatly curtailed as to all but optimum buildings, especially as most mortgages are of long duration. Mr. Castillio believes that the problem with the existing law is the difficulty of establishing a "violation" (which he analogizes to the difficulty of evicting on the grounds of "nuisance"), and that it is the procedure for establishing the violation which must be streamlined, not the foreclosure procedure itself.

Another issue remains; is there or should there be a remedy other than foreclosure (lengthy & unwieldy) available to the mortgagee? A second standard mortgage clause provides that the mortgagor assigns to the mortgagee the rents, issues, and profits of the premises and the right to enter and collect the same, as security for the payment of the debt. This right the mortgagee immediately waives, allowing the mortgagor ~~immediately~~

~~waives, allowing the mortgagor~~ to collect the benefits until default under any of the covenants, conditions, or agreements. See HARVEY, op. cit. supra P. 592.

Ideally, this clause could be invoked to give the mortgagee an immediate right, upon the mortgagor's default, to collect the rent money and apply it to the correction of the violation. Unfortunately this covenant does not operate automatically. It has been steadfastly held that a provision for such assignment of rents is merely further security for the debt and is not an absolute transfer.

Freedman's Saving & Trust Co. v Shepherd, 8 Sup. Ct. 1250 (1888)
Sullivan v Rosson, 223 NY 217, 119 NE 405 (1918)

In other words, the mortgagee is not entitled to the rents until he asserts his right in a legal form, or until the owner allows his taking possession or gives his consent.

In re Banner, 149 Fed. 936 (D.C., S.D.N.Y. 1907)
Dime Savings Bank v Altman, 249 A.D. 174, 291 NYS 417 (2d dept. 1936) aff'd 275 NY 62, 9 NE 2d 778

Because the procedure for enforcing the covenant is difficult, the mortgagee's best remedy is often foreclosure, itself a lengthy and involved procedure. Some authorities believe that a separate agreement of the rent assignment clause would become effective upon default if the tenants had been served with copies at the time of the agreement. See HARVEY op. Cit. Supra p 426. But, there is no case support for this contention.

A relevant issue, then, is the possibility of a summary-type proceeding for the enforcement of this clause. Because this would deal with court procedure, it would have to be done by state law. (see my first memo!) This proposal has several advantages it would not discourage mortgage lending, as no duty (& no concommitant criminal sanctions) would be imposed on mortgagees.

It would make it feasible for mortgagees to take action which would be in their best interests (protecting their investments). It might incite owners to take action to prevent or immediately correct violations (at a more menacing threat of losing all profits than the Receivership Law is presently able to make).

IV. Conclusions:

There are no "conclusions" to be drawn regarding New York City's power to enact legislation in the landlord/tenant area. No cases are directly on point and the cases considered indicate that the question of the extent and limits of the city's powers under City Home Rule Law has to be decided on a case by case basis. Public sentiment being formed by the cases now pending will undoubtedly have its effects in this area. Random conclusions and thoughts: 1) housing (especially as it affects public health), is an area in which courts will tend to be more lenient in allowing city (especially New York City, because of the extraordinary conditions consisting there) legislation, absent a manifestation of state intention to re-empt a particular area. The Multiple Dwelling Law is strong support against any contention of state intention to re-empt this area. 2) Although any housing provision may be made more restrictive, it would be, at best, difficult to amend or change court procedure (i.e. Sec. 755). 3) It would be more feasible to fix heavier penalties for non-complying landlords. 4) The possibility of supplementing building codes should be researched.

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

Index Nos. 98410,98411, & 98412

OMAL REALTY CORPORATION,
Landlord,

-against-

JANE WILLIAMS, JOSEFINA JUGO and PEDRO COLON,
Tenants.

JUDICIAL SUBPOENA

TO: FRANK RIVERA, 133 East 115th Street, New York, N.Y.

GREETINGS:

WE COMMAND YOU, that all business and excuses being laid aside, you and each of you appear and attend before the Honorable Judge presiding in this Court at a Trial Term Part II thereof at 111 Centre Street, room 763, on the 22nd day of December, 1964 at 9:30 o'clock in the forenoon, and at any recessed or adjourned date to give testimony as a witness upon the part of Defendants, in a certain civil action now pending in this Court, then and there to be tried, between OMAL REALTY CORPORATION, plaintiff and JANE WILLIAMS, JOSEFINA LUGO and PEDRO COLON, defendants;

FAILURE TO COMPLY with this SUBPOENA is punishable as a CONTEMPT OF COURT and shall MAKE YOU LIABLE to the persons on whose behalf this subpoena was issued for a PENALTY not to exceed FIFTY DOLLARS and all damages sustained by reason of your failure to comply.

WITNESS, Honorable Arthur A. Klotz, one of the Judges of the said Court, at 111 Centre Street, the 18th day of December, 1964.

JULES D. ZALON, ESQ.
Attorney for Defendants
c/o SCHIFFER & COHEN, ESQS.
40 East 49th Street
New York, N.Y. 10017
PLaza 2-8060

DiGirolimo buildings:

Caveat: this list was compiled approximately June, 1964, and added to as new buildings were found. But, there is no assurance that he has not either added of subtracted from them since.

1. 106-108 East 124th St. (2)
2. 221-23-25 West 123rd St. (3)
3. 1445 5th Ave.
4. 1465 5th Ave
5. 71 East 118th St
6. 50-52 East 131st St (2)
7. 103-105-107 & 109 East 102nd St (3)(4)
8. 269-71 West 117th St (2)
9. 176 West 137th St
10. 335-37 East 108th St (1)
11. 339-41 East 108th St (1)
12. 106-108 East 119th St (2)
13. 132-134 East 119th St (2)
14. 2901 8th Ave
15. 2105-07 1st Ave (2)

Total: 26 buildings

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

Index No.

ANN GRIDLEY,
Landlord,

-against-

JANE WILLIAMS,
Tenant.

Notice of Appearance & Answer

S I R :

PLEASE TAKE NOTICE, that the tenant, JANE WILLIAMS, hereby appears in this action and that the undersigned has been retained as attorney for siad defendant and demands that you serve all papers in this action upon the undersigned at the address stated below.

PLEASE TAKE FURTHER NOTICE, that the tenant hereby interposes the following answer to the complaint herein:

1. The petition is not signed by a person who is an owner or an agent for the owner, and that therefore the Court does not have jurisdiction.

2. Without waiving tenant's objection to the jurisdiction of the Court herein : General Denial.

3. Without waiving tenant's objection to the jurisdiction of the Court herein: Landlord did not conform to the requirements of Section 735 of the Real Property Actions and Proceedings Law.

4. Without waiving tenant's objection to the jurisdiction of the Court herein: Failure of Consideraton.

5. Without waiving tenant's objection to the jurisdicton of the Court herein: Partial Eviction.

6. Without waiving tenant's objection to the jurisdiction of the Court herein: On the 5th day of October, 1964, Tenant entered into an agreemtn with Omal Realty Corporation, owner of the premises in question, a copy of which is annexed hereto, in which agreementm the owner promised to make substantial repairs in the building, and to complete such repairs on or before the 1st day of November, 1964, in default of which repairs, Tenant would be relieved of further payment of Rent, without prejudice to tenant's right to remain in possession of the said property. Owner has breached this contract by not making the repairs, thereby relieving tenant of her obligation for further rent payment. Owner has continued to breach the said contract by not taking the required action called for under the contract in the event of non-compliance. Complainant is therefore denied any right to sue for said rent, as complainant's rights are subject to, and no greated that, the owner's.

7. In the alternative, and without waiving tenant's objection to the jurisdiction of the Court herein: A defense of Section 755 of the Real Property Actions and Proceedings Law.

2. This action is brought in the name of a person who is not the landlord nor the agent of the landlord and that therefore the Court does not have jurisdiction.

TO: Joseph Di Gerolimo

Thursday, December 3, 1964

At E. 124th Street

Inspector Sylvestri showed up, and said that he was merely there for a re-inspection to clear up old violations, and that he would not consider going into apartments which are not presently on his check-list. He did state, however, that he would investigate any new complaints arising from tenants in those apartments which he was going to inspect anyway.

I called Tytell immediately, who said that that's all that the inspector could do, inasmuch as he received no written petition from the tenants, as I had obtained (through Konstan). I informed him that it had been sent out Special Delivery and it must therefore must have gotten lost in the mail (or simply not noticed). He continued to tell me that he could not authorize a cellar to roof, or anything of that nature unless he had something in writing to justify the search, so as to avoid any landlord charge that this was simply a purge of the landlord. I assured that I could collect such a list of signatures on a petition which I would then write myself, and have it in Sulvestri's hands within minutes. Tytell then told me to tell Sylvestri to call him. I inquired whether it was to instruct him to do a full search inspection if I were to collect the signatures at once, since that was what the previous five minutes of conversation was about, and he replied,"Just have Sylvestri call me."

I told Sylvestri that Tytell wanted him to call /then/ , and explained what seemed to be on Tytell's mind. Sylvestri said that it was impossible, explaining that all this information comes out of an IBM, and it must be checked as it is listed on his route sheet; that therefore he was unable to do it even if Tytell ordered him to. Nonetheless, I asked him to call Tytell then so that they could make arrangements which might be satisfactory in disposing of the matter. He absolutely refused to call him "until I finish at least this one apartment. I'll call him as soon as I finish one apartment. " When I inquired what the difference was between calling now and calling later, inasmuch as it would take the same amount of time, and besides which, Tytell wanted him to call immediately, he said,"What can I tell him now? What if he wants information? I can't tell him anything now." I informed him again that this was in specific reference to obtaining a full inspection and that therefore it was essential that he call him before he does anything, he again said no, using the same rediculous reason. He

stressed again and again the importance of the IBM machine, and that he was powerless to do anything other than what his route sheet listed.

At that time, he was"inppecting" I-W (Velez) at 108. He simply went in and turned on the water, and his associate checked one window they happened to be near. Velez then offered to show him numerous things which hadn't been corrected, and numerous items of violation throughout the house, pointing out most of them, e.g., radiator leak in living room, loose frames on the windows in the front, cieling placter falling in kitchen and bedroom and hall, rat holes in living room and kitchen, etc. Sylvestri's answer:"Not now." and left abruptly.

It was at this time that the discussion about calling Tytell took place, and although he said that he would call only after inspecting that whole apartment building, by the time I returned from again calling Tytell (which took only about four minutes), he was half way through the second house. Still he did not call, nor did he ever call.

I caught up with them in Lugo's apartment, a singularly dispicable apartment. Huge chunks of plaster were out all over, no water at all in the bathroom, only a trickle of water in the kitchen, and then only out of one tap, and at a time when noone else in the house was using the water, no paint, very loose floorboards reminiscent of an old sea barge, broken doors fastened only by a bar across to prevent access. Sylvestri made a numbers of comments, such as "holy cow" or other such in disbelieving fashion, but only made one notation on his sheet. When I asked him whether the water supply in the kitchen was considered adequate, he refused to answer, and said that he wo71d not continue with the inspection unless we let him alone, that his report was a public record, but he was not going to allow a bunch of "hostile parties" get in his was while he does his "job."

Again I asked him whether he would call Tytell, and he then answered that he would, as soon as he got through with the one building, which was novel, inasmuch as he was already in the second bldg. He did state, quite annoyingly, that he was going to put into his report that I , Constan and DiGirolimo were harrassing him, and not letting him do his work, despite the fact that I was only in Velez' apartment momentarily to tell him to call Tytell at first, and then caught up with him again only at Lugo's apartment, at which time I immediately asked that question.

PETITION TO THE BUILDINGS DEPARTMENT

We the undersigned, tenants of 106 and 108 East 124th Street, request and demand a thorough inspection, from cellar to roof, of the premises in which we dwell, which shall include an inspection of each individual apartment in both buildings. It is urgent that this inspection be made as soon as possible.

106 E. 124 St.

~~Aurelio~~
Manuel de Leon
Luis Rodriguez

108 E. 124 St.

Aurelio Herrera apt 3E
Carlos Martinez apt 3W
Pura Vélez apt 1W
Pedro Molon 4W
José B. Caballero 1-E
Luis R. Rivero
Pedro Rosario

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:

JULES D. ZALON, being duly sworn, deposes and says that he is an attorney at law, and the attorney for the respondent in the proceedings herein.

That respondent entered into an agreement with the owner of the building in question on October 6, 1964, wherein the owner promissed to make substantial repairs and replacements, and to have same completed on or before November 1, 1964.

That, under the terms of the agreement, ~~no rent was to become due until either the tenants were completely satisfied with the work so done, or until an inspection was had by the~~ department of buildings, and a report issued stating that the work so contracted for was completely satisfactory to the inspector and~~the deputy commissioner~~.

~~That, if the work was~~ not completed satisfactorily to the tenants by November 1, that no rent was thereafter to become due or payable until after written notice of completion was received from the owner, and, if the tenants were then not completely satisfied, after an inspection was demanded and had, ~~and~~ by the dapartment of buildings, and a report issued stating that the work so contracted for was completely satisfactory to the inspector and deputy Commissioner Gribetz.

That no written notice was ever received by any of the tenants in the two buildings in question with regard to the completion of said work; that, to the contrary, the only written notice ever received was the notice of eviction contained in the present proceedings.

That the owner, therefore, did not satisfy the terms of his agreement, and did not comply with the conditions precedent to bringing any action for rent, and that this presnet proceeding is in direct violation of the agreement so entered into.

WHEREFORE, your deponent prays that the proceeding be dismissed.

Never offered

FORM SR-1
(REV. 7/61)

THE CITY OF NEW YORK

DEPARTMENT OF BUILDINGS

MANHATTAN
MUNICIPAL BUILDING
NEW YORK 7, N. Y.

BRONX
1932 ARTHUR AVENUE
BRONX 57, N. Y.

BROOKLYN
MUNICIPAL BUILDING
BROOKLYN 1, N. Y.

QUEENS
120-55 QUEENS BLVD.
KEW GARDENS 24, L. I.

RICHMOND
BOROUGH HALL
ST. GEORGE 1, S. I.

Loretta Houston
195 Claremont Ave
N Y C

Date: OCT 8 1964

Date Requested: 9-29-64

Your Reference: Title # _____

Our Reference : Search Clerk W Mahoney RS

REPORT OF SEARCH

Premises 108 East 124th Street Search # 424301

A search of the records of this department reveals that the following violations are pending. Copies of the violations, if any, are enclosed.

DATE OF SEARCH INDICATES LAST DATE OF POSTING

Building Division, Violation Numbers: None Date of Search 9-29-64

Housing Division, Violation Item Numbers: Copy Attached Date of Search 10-6-64

Classification (if requested) O.L.

Occupancy _____

Other City Agencies (on Multiple Dwellings only): None Date of Search 10-1-64

IMPORTANT NOTICE ABOUT SEARCH INFORMATION ABOVE

Department of Buildings Violations and Classification:

Nature of Report: The above information is based solely on the records of the department on the search date indicated. No inspection of the premises was involved in this search. There may be violations or changes in classification or occupancy of which this department has no knowledge and therefore do not appear in the record. Such violations or changes in classification or occupancy can be determined by a properly authorized search inspection upon payment of the prescribed fee.

Construction in Progress: Furthermore, this search does not include information regarding any violations or changes in classfication or occupancy which may be involved in connection with any alteration or other application which is on file in this department and which has not been fully completed.

Other City Agency Violations or Other Corrective Orders (on Multiple Dwellings only):

Information is received from the Fire Department, Department of Health, Department of Air Pollution Control and the Department of Water Supply, Gas & Electricity. This may not represent all outstanding violations or other corrective orders on our date of search since other agencies may take 72 hours in reporting and the additional time spent in receiving and recording in this department must also be considered.

Thomas V. Burke
BOROUGH SUPERINTENDENT

By: W Mahoney

THE CITY OF NEW YORK

DEPARTMENT OF BUILDINGS

280-0045

LIST OF PENDING VIOLATIONS

PREMISES	BORO	AREA	BLOCK	LOT	CLASS	REG. NO.	DATE ISSUED
108 EAST 124 STREET	MANH	339	01772	0067	OL	126694	OCT 6, 1964

PRESENT STATUS OF PREMISES	LAST INSPECTED	STY'S	APTS.	B-UNITS	OTHER	CNS	NAME AND ADDRESS OF: AGENT
INSPECTOR RECOMMENDED RE	8-17-64	5	10			7	JACOB BROWNSTEIN 2912 PARK AVE BRONX 51 N.Y.

TYPE OF INSPECTION	REASON
L KONSTAN	424301 SEARCH

DATE REPORTED	PRV. RPT.	INSP. RPT.	ITEM	ORDER	SECTION OR COMPLAINT NO.	VIOLATION DESCRIPTION
DPU REFERENCE FIELD 64229A0999999999999999999999996429764265010923 64						
03-30-64	N		165	224	M	66, 67, 78, 107, 149, 188, 189, 233, 238, 248 M/D LAW ARRANGE AND MAKE SELF-CLOSING THE DOORS AT PUBLIC HALL TO ROOF.
07-13-64	N		167	6098	O	D26-3.1 ADM CODE FILE WITH THIS DEPARTMENT A WRITTEN DESIGNATION FOR CHANGE IN MANAGING AGENT OF BUILDING.
08-06-64	N		168	42	M	78 M/D LAW REPLACE WITH NEW THE BROKEN, DEFECTIVE WINDOW GLASS 1ST STY WEST APT 3RD ROOM FROM REAR.
08-06-64	N		169	415	M	77 M/D LAW REPAIR THE LEAKY AND/OR DEFECTIVE FAUCETS AT KITCHEN SINK 1ST STY WEST APT.
08-06-64	N		170	224	M	66, 67, 78, 107, 149, 188, 189, 233, 238, 248 M/D LAW ARRANGE AND MAKE SELF-CLOSING THE DOORS AT ENTRANCE TO 1ST STY WEST APT.
08-06-64	N		171	415	M	77 M/D LAW REPAIR THE LEAKY AND/OR DEFECTIVE FAUCETS AT KITCHEN SINK 2ND STY EAST APT.
08-06-64	N		172	411A	M	75 M/D LAW PROVIDE ADEQUATE SUPPLY OF HOT WATER FOR THE FIXTURES AT KITCHEN SINK,WASH BASIN & BATHTUB OF BATHROOM 2ND STY EAST APT.
08-06-64	N		173	44	M	78 M/D LAW REPAIR THE BROKEN OR DEFECTIVE PLASTERED SURFACES AND PAINT IN UNIFORM COLOR THE WALLS 3RD STY WEST APT BATHROOM.
08-06-64	N		174	40	M	78 M/D LAW PROPERLY REPAIR THE BROKEN OR DEFECTIVE MARBLE BASE 3RD STY WEST APT BATHROOM.

0000108	19430	1	********** NOT TO BE USED FOR INSPECTION **********										2
PRINC. HOUSE NO.	STREET CODE	SC-B-AREA	INSPECTION DATE	BADGE NO.	RE DAYS	A-I	C-L	Target	Items	PUBP.	SERIAL NUMBER	TCKT.	CONTINUED ON

SHOW CAUSE OR INSPECTOR RECOMMENDATIONS: ☐

INSPECTOR'S SIGNATURE

INSPECTION OF PUBLIC PARTS: EGRESS YES ☐ NO ☐ CELLAR YES ☐ NO ☐

SUPERVISOR DATE	REVIEWER DATE	INSPECTION CONTROL	DATA PROC. UNIT	BOROUGH CONTROL - TO FILE

FE.

THE CITY OF NEW YORK

DEPARTMENT OF BUILDINGS

LIST OF PENDING VIOLATIONS

PREMISES	BORO	AREA	BLOCK	LOT	CLASS	REG. NO.	DATE ISSUED
108 EAST 124 STREET	MANH	339	01772	0067	OL	126694	OCT 6, 1964

PRESENT STATUS OF PREMISES	LAST INSPECTED	STY'S	APTS.	B-UNITS	OTHER	CNS	NAME AND ADDRESS OF: AGENT
INSPECTOR RECOMMENDED RE	8-17-64	5	10			7	JACOB BROWNSTEIN 2912 PARK AVE BRONX 51 N.Y.

TYPE OF INSPECTION	REASON
L KONSTAN	424301 SEARCH

DATE REPORTED	PRV. RPT.	INSP. RPT.	ITEM	ORDER	SECTION OR COMPLAINT NO.	VIOLATION DESCRIPTION
08-06-64	N		175	42	M	78 M/D LAW REPLACE WITH NEW THE BROKEN, DEFECTIVE SASH CORD 3RD STY WEST APT KITCHEN WINDOW.
08-06-64	N		176	40	M	78 M/D LAW PROPERLY REPAIR THE BROKEN OR DEFECTIVE WOOD FLOOR 4TH STY EAST APT KITCHEN.
08-06-64	N		177	411A	M	75 M/D LAW PROVIDE ADEQUATE SUPPLY OF HOT WATER FOR THE FIXTURES AT KITCHEN SINK,WASH BASIN AND BATHTUB OF BATHROOM 4TH STY EAST APT.
08-06-64	N		178	44	M	78 M/D LAW REPAIR THE BROKEN OR DEFECTIVE PLASTERED SURFACES AND PAINT IN UNIFORM COLOR THE WALLS OF BATHROOM,CEILINGS OF FRONT ROOM & 2ND ROOM FROM FRONT 5 STY WEST APT.
08-06-64	N		179	411A	M	75 M/D LAW PROVIDE ADEQUATE SUPPLY OF HOT WATER FOR THE FIXTURES AT KITCHEN SINK,WASH BASIN & BATHTUB OF BATHROOM 5TH STY WEST APT.

LAST ITEM 179

0000108	19430	1	**********NOT TO BE USED FOR INSPECTION**********										
PRINC. HOUSE NO.	STREET CODE	SC-B-AREA	INSPECTION DATE	BADGE NO.	RE DAYS	A-I	C-L	Target	Items	PUBP.	SERIAL NUMBER	TCKT.	CONTINUED ON

SHOW CAUSE OR INSPECTOR RECOMMENDATIONS: ☐

INSPECTOR'S SIGNATURE

INSPECTION OF PUBLIC PARTS: EGRESS YES ☐ NO ☐ CELLAR YES ☐ NO ☐

SUPERVISOR DATE	REVIEWER DATE	INSPECTION CONTROL	DATA PROC. UNIT	BOROUGH CONTROL - TO FILE

FORM BR-1
(REV. 7/61)

THE CITY OF NEW YORK

DEPARTMENT OF BUILDINGS

MANHATTAN
MUNICIPAL BUILDING
NEW YORK 7, N. Y.

BRONX
1932 ARTHUR AVENUE
BRONX 57, N. Y.

BROOKLYN
MUNICIPAL BUILDING
BROOKLYN 1, N. Y.

QUEENS
120-55 QUEENS BLVD.
KEW GARDENS 24, L. I.

RICHMOND
BOROUGH HALL
ST. GEORGE 1, S. I.

Loretta Konstan
195 Claremont Ave
N.Y.C 27,

Date: OCT 8 1964

Date Requested: 9-29-64

Your Reference: Title #

Our Reference: Search Clerk W Mahoney RS

REPORT OF SEARCH

Premises 106 East 124th Street Search # 424300

A search of the records of this department reveals that the following violations are pending. Copies of the violations, if any, are enclosed.

DATE OF SEARCH INDICATES LAST DATE OF POSTING

Building Division, Violation Numbers: None Date of Search 9-29-64

Housing Division, Violation Item Numbers: Copy Attached Date of Search 10-6-64

Classification (if requested) OL

Occupancy

Other City Agencies (on Multiple Dwellings only): Date of Search 10-1-64

Dept Health Copy Attached

IMPORTANT NOTICE ABOUT SEARCH INFORMATION ABOVE

Department of Buildings Violations and Classification:

Nature of Report: The above information is based solely on the records of the department on the search date indicated. No inspection of the premises was involved in this search. There may be violations or changes in classification or occupancy of which this department has no knowledge and therefore do not appear in the record. Such violations or changes in classification or occupancy can be determined by a properly authorized search inspection upon payment of the prescribed fee.

Construction in Progress: Furthermore, this search does not include information regarding any violations or changes in classfication or occupancy which may be involved in connection with any alteration or other application which is on file in this department and which has not been fully completed.

Other City Agency Violations or Other Corrective Orders (on Multiple Dwellings only):

Information is received from the Fire Department, Department of Health, Department of Air Pollution Control and the Department of Water Supply, Gas & Electricity. This may not represent all outstanding violations or other corrective orders on our date of search since other agencies may take 72 hours in reporting and the additional time spent in receiving and recording in this department must also be considered.

Thomas V. Burke
BOROUGH SUPERINTENDENT

By: W F Mahoney

THE CITY OF NEW YORK

DEPARTMENT OF BUILDINGS

LIST OF PENDING VIOLATIONS

PREMISES	BORO	AREA	BLOCK	LOT	CLASS	REG. NO.	DATE ISSUED
106 EAST 124 STREET	MANH	339	01772	0068	OL	126692	OCT 6, 1964

PRESENT STATUS OF PREMISES	LAST INSPECTED	STY'S	APTS.	B-UNITS	OTHER	CNS	NAME AND ADDRESS OF: AGENT
AT SHOW CAUSE	8-17-64	5	10			7	JACOB BROWNSTEIN 2912 PARK AVE BRONX 51 N.Y.

TYPE OF INSPECTION	REASON
L KONSTAN	424300 SEARCH

DATE REPORTED	PRV. RPT.	INSP. RPT.	ITEM	ORDER	SECTION OR COMPLAINT NO.	VIOLATION DESCRIPTION
DPU REFERENCE FIELD 64222A0642669999999999999999996429764265010923 64						
10-14-63	N		122	42	M	78 M/D LAW REPLACE WITH NEW THE BROKEN, DEFECTIVE GLASS-1 STY EAST APT 1E KITCHEN WINDOW & 3RD ROOM FROM FRONT WINDOW.
10-14-63	A		123	44	M	78 M/D LAW REPAIR THE BROKEN OR DEFECTIVE PLASTERED SURFACES AND PAINT IN UNIFORM COLOR THE CEILING-2 STY WEST APT 2W KITCHEN.
10-14-63	A		124	40	M	78 M/D LAW PROPERLY REPAIR THE BROKEN OR DEFECTIVE BASEBOARD 2 STY WEST APT 2W BATHROOM.
10-14-63	A		125	40	M	78 M/D LAW PROPERLY REPAIR THE BROKEN OR DEFECTIVE WOOD FLOOR-2 STY WEST APT 2W KITCHEN.
10-14-63	N		127	40	M	78 M/D LAW PROPERLY REPAIR THE BROKEN OR DEFECTIVE & NOT PROPERLY FITTED WINDOW SASH 5TH STY WEST APT 5W KITCHEN & REAR ROOM.
02-10-64	N		131	415	M	77 M/D LAW REPAIR THE LEAKY AND/OR DEFECTIVE FAUCETS AT 1ST STORY EAST APT 1E BATHTUB BATHROOM & KITCHENSINK.
02-10-64	N		136	40A	M	78 M/D LAW PROPERLY REPAIR WITH SIMILAR MATERIAL THE BROKEN OR DEFECTIVE CEILING CELLAR AT CENTER.
02-10-64	A		139	441	O	80 M/D LAW PAINT WITH LIGHT COLORED PAINT TO THE SATISFACTION OF THIS DEPARTMENT, THE SURFACES AT WALLS & CEILINGS 2ND STORY WEST APT 2W FRONT ROOM & 2ND ROOM FROM FRONT.

0000106	19430	1	********NOT TO BE USED FOR INSPECTION**********										2
PRINC. HOUSE NO.	STREET CODE	SC-B-AREA	INSPECTION DATE	BADGE NO.	RE DAYS	A-I	C-L	Target	Items	PUBP.	SERIAL NUMBER	TCKT.	CONTINUED ON

SHOW CAUSE OR INSPECTOR RECOMMENDATIONS: ☐

INSPECTOR'S SIGNATURE

INSPECTION OF PUBLIC PARTS: EGRESS YES ☐ NO ☐ CELLAR YES ☐ NO ☐

SUPERVISOR DATE	REVIEWER DATE	INSPECTION CONTROL	DATA PROC. UNIT	BOROUGH CONTROL - TO FILE

F.E.

CITY OF NEW YORK

DEPARTMENT OF BUILDINGS

LIST OF PENDING VIOLATIONS

	BORO	AREA	BLOCK	LOT	CLASS	REG. NO.	DATE ISSUED
106 EAST 124 STREET	MANH	339	01772	0068	OL	126692	OCT 6, 1964

PRESENT STATUS OF PREMISES	LAST INSPECTED	STY'S	APTS.	B-UNITS	OTHER	CNS	NAME AND ADDRESS OF: AGENT
AT SHOW CAUSE	8-17-64	5	10			7	JACOB BROWNSTEIN 2912 PARK AVE BRONX 51 N.Y.

TYPE OF INSPECTION	REASON
L KONSTAN	424300 SEARCH

DATE REPORTED	PRV. RPT.	INSP. RPT.	ITEM	ORDER	SECTION OR COMPLAINT NO.	VIOLATION DESCRIPTION
02-10-64	A		140	44	M	78 M/D LAW REPAIR THE BROKEN OR DEFECTIVE PLASTERED SURFACES AND PAINT IN UNIFORM COLOR THE WALLS 2ND STORY WEST APT 2W PRIVATE HALL & 2ND ROOM FROM FRONT.
02-10-64	A		141	224	M	66, 67, 78, 107, 149, 188, 189, 233, 238, 248 M/D LAW ARRANGE AND MAKE SELF-CLOSING THE DOORS AT ENTRANCE 2ND STORY WEST APT 2W.
02-10-64	A		142	44	M	78 M/D LAW REPAIR THE BROKEN OR DEFECTIVE PLASTERED SURFACES AND PAINT IN UNIFORM COLOR THE WALLS 2ND STORY EAST APT 2E BATHROOM & REAR ROOM.
02-10-64	A		143	415	M	77 M/D LAW REPAIR THE LEAKY AND/OR DEFECTIVE FAUCETS AT 2ND STORY EAST APT 2E BATHTUB & WASH BASIN BATH ROOM.
02-10-64	A		144	441	O	80 M/D LAW PAINT WITH LIGHT COLORED PAINT TO THE SATISFACTION OF THIS DEPARTMENT, THE SURFACES AT WALLS & CEILINGS 2ND STORY EAST APT 2E ENTIRE APT.
02-10-64	A		148	40	M	78 M/D LAW PROPERLY REPAIR THE BROKEN OR DEFECTIVE WOOD WAINSCOTING. 3 STY EAST APT 3E-KITCHEN.
02-10-64	N		152	42	M	78 M/D LAW REPLACE WITH NEW THE BROKEN, DEFECTIVE RADIATOR SHUTOFF CONTROL VALVE 4TH STORY EAST APT 4E FRONT ROOM.
02-10-64	N		153	42	M	78 M/D LAW REPLACE WITH NEW THE BROKEN, DEFECTIVE WINDOW GLASS 4TH STORY EAST APT 4E FRONT ROOM WEST WINDOW.

0000106	19430	1	**********	NOT TO BE USED FOR INSPECTION							**********		3
PRINC. HOUSE NO.	STREET CODE	SC-B-AREA	INSPECTION DATE	BADGE NO.	RE DAYS	A-I	C-L	Target	Items	PUBP.	SERIAL NUMBER	TCKT.	CONTINUED ON

SHOW CAUSE OR INSPECTOR RECOMMENDATIONS: ☐

INSPECTOR'S SIGNATURE

INSPECTION OF PUBLIC PARTS: EGRESS YES ☐ NO ☐ CELLAR YES ☐ NO ☐

SUPERVISOR DATE	REVIEWER DATE	INSPECTION CONTROL	DATA PROC. UNIT	BOROUGH CONTROL - TO FILE

CITY OF NEW YORK

DEPARTMENT OF BUILDINGS

LIST OF PENDING VIOLATIONS

	BORO	AREA	BLOCK	LOT	CLASS	REG. NO.	DATE ISSUED
106 EAST 124 STREET	MANH	339	01772	0068	OL	126692	OCT 6, 1964

PRESENT STATUS OF PREMISES	LAST INSPECTED	STY'S	APTS.	B-UNITS	OTHER	CNS	NAME AND ADDRESS OF: AGENT
AT SHOW CAUSE	8-17-64	5	10			7	JACOB BROWNSTEIN 2912 PARK AVE BRONX 51 N.Y.
TO BE USED FOR INSPECTION	REASON						
L KONSTAN	424300 SEARCH						

DATE REPORTED	PRV. RPT.	INSP. RPT.	ITEM	ORDER	SECTION OR COMPLAINT NO.	VIOLATION DESCRIPTION
02-10-64	N		155	299	M	77 M/D LAW REPAIR THE FLUSHING APPARATUS AND MAINTAIN SAME SO AS TO EFFECTIVELY FLUSH THE WATER CLOSET AT 4TH STORY EAST APT 4E BATHROOM.
02-10-64	D		157	415	M	77 M/D LAW REPAIR THE LEAKY AND/OR DEFECTIVE FAUCETS AT 4TH STORY EAST APT 4E BATHTUB & WASH BASIN BATH ROOM.
02-10-64	D		159	44	M	78 M/D LAW REPAIR THE BROKEN OR DEFECTIVE PLASTERED SURFACES AND PAINT IN UNIFORM COLOR THE WALLS 5TH STORY WEST APT 5W BATHROOM KITCHEN & FRONT ROOM.
02-10-64	N		160	441	O	80 M/D LAW PAINT WITH LIGHT COLORED PAINT TO THE SATISFACTION OF THIS DEPARTMENT, THE SURFACES AT WALLS CEILINGS & WOODWORK 5TH STORY WEST APT 5W ENTIRE APT.
04-09-64	N		162	446	O	80 M/D LAW REMOVE THE ACCUMULATION OF REFUSE AND/OR RUBBISH AND MAINTAIN IN A CLEAN CONDITION THE AIRSHAFT AT WEST.
07-13-64	N		173	609B	O	D26-3.1 ADM CODE FILE WITH THIS DEPARTMENT A WRITTEN DESIGNATION FOR CHANGE IN MANAGING AGENT OF BUILDING.
08-04-64	N		174	42	M	78 M/D LAW REPLACE WITH NEW THE BROKEN, DEFECTIVE GLASS IN WINDOW 5TH STY WEST APT 5W REAR ROOM.
08-04-64	N		175	44	M	78 M/D LAW REPAIR THE BROKEN OR DEFECTIVE PLASTERED SURFACES AND PAINT IN UNIFORM COLOR THE WALLS & CEILING 4TH STY EAST APT 4E BATHROOM.

0000106	19430	1	**********	NOT TO BE	USED	FOR	INSPECTION						4
PRINC. HOUSE NO.	STREET CODE	SC-B-AREA	INSPECTION DATE	BADGE NO.	RE DAYS	A-I	C-L	Target	Items	PUBP.	SERIAL NUMBER	TCKT.	CONTINUED ON

SHOW CAUSE OR INSPECTOR RECOMMENDATIONS: ☐

INSPECTOR'S SIGNATURE

INSPECTION OF PUBLIC PARTS: EGRESS YES ☐ NO ☐ CELLAR YES ☐ NO ☐

SUPERVISOR DATE	REVIEWER DATE	INSPECTION CONTROL	DATA PROC. UNIT	BOROUGH CONTROL - TO FILE

CITY OF NEW YORK

DEPARTMENT OF BUILDINGS

LIST OF PENDING VIOLATIONS

106 EAST 124 STREET	BORO	AREA	BLOCK	LOT	CLASS	REG. NO.	DATE ISSUED
PRESENT STATUS OF PREMISES	MANH	339	01772	0068	OL	126692	OCT 6, 1964

PRESENT STATUS OF PREMISES	LAST INSPECTED	STY'S	APTS.	B-UNITS	OTHER	CNS
AT SHOW CAUSE	8-17-64	5	10			7

TYPE OF INSPECTION

L KONSTAN

REASON

424300 SEARCH

NAME AND ADDRESS OF: AGENT
JACOB BROWNSTEIN
2912 PARK AVE
BRONX 51 N.Y.

DATE REPORTED	PRV. RPT.	INSP. RPT.	ITEM	ORDER	SECTION OR COMPLAINT NO.	VIOLATION DESCRIPTION
08-04-64	N		176	411	M	75 M/D LAW PROVIDE ADEQUATE SUPPLY OF COLD WATER FOR THE FOLLOWING FIXTURES AT 4TH STY EAST APT 4E KITCHEN & BATHROOM.
08-04-64	N		177	45	M	78 M/D LAW PROPERLY SECURE THE LOOSE GLASS IN WINDOW 4TH STY EAST APT 4E REAR ROOM.
08-04-64	N		178	40	M	78 M/D LAW PROPERLY REPAIR THE BROKEN OR DEFECTIVE FAUCET OF SINK 4TH STY EAST APT 4E KITCHEN.
08-04-64	N		179	40	M	78 M/D LAW PROPERLY REPAIR THE BROKEN OR DEFECTIVE TOILET SEAT 1ST STY WEST APT 1W BATHROOM.
08-04-64	N		180	480A	M	78 M/D LAW ABATE THE NUISANCE CONSISTING OF STORAGE OF DISCARDED WOOD CELLAR.
08-04-64	N		181	42A	M	78 M/D LAW REPLACE WITH NEW THE MISSING TILE COPING EAST PARAPET WALL.
08-10-64	N		182	45	M	78 M/D LAW PROPERLY SECURE THE LOOSE ELECTRIC CEILING FIXTURE 4TH STY WEST APT 4W REAR ROOM.
08-10-64	N		183	42	M	78 M/D LAW REPLACE WITH NEW THE BROKEN, DEFECTIVE GLASS 5TH STY EAST APT 5E 3RD ROOM FROM FRONT WINDOW.
08-10-64	N		184	40	M	78 M/D LAW PROPERLY REPAIR THE BROKEN OR DEFECTIVE AND OR NOT PROPERLY OPERATIVE WINDOW SASHES 5TH STY EAST APT 5E 3RD ROOM FROM FRONT.
08-10-64	N		185	40	M	78 M/D LAW PROPERLY REPAIR THE BROKEN OR DEFECTIVE WOOD FLOOR 5TH STY EAST APT 5E KITCHEN & 4TH ROOM FROM FRONT.

0000106	19430	1	********** NOT TO BE USED FOR INSPECTION **********											5
PRINC. HOUSE NO.	STREET CODE	SC-B-AREA	INSPECTION DATE	BADGE NO.	RE DAYS	A-I	C-L	Target	Items	PUBP.	SERIAL NUMBER	TCKT.	CONTINUED ON

SHOW CAUSE OR INSPECTOR RECOMMENDATIONS: ☐

INSPECTOR'S SIGNATURE

INSPECTION OF PUBLIC PARTS: EGRESS YES ☐ NO ☐ CELLAR YES ☐ NO ☐

SUPERVISOR DATE

REVIEWER DATE

INSPECTION CONTROL

DATA PROC. UNIT

BOROUGH CONTROL - TO FILE

CITY OF NEW YORK

DEPARTMENT OF BUILDINGS

LIST OF PENDING VIOLATIONS

	BORO	AREA	BLOCK	LOT	CLASS	REG. NO.	DATE ISSUED
106 EAST 124 STREET	MANH	339	01772	0068	OL	126692	OCT 6, 1964

PRESENT STATUS OF PREMISES	LAST INSPECTED	STY'S	APTS.	B-UNITS	OTHER	CNS	NAME AND ADDRESS OF: AGENT
AT SHOW CAUSE	8-17-64	5	10			7	JACOB BROWNSTEIN 2912 PARK AVE BRONX 51 N.Y.
TOTYPE OF INSPECTION	REASON						
L KONSTAN	424300 SEARCH						

DATE REPORTED	PRV. RPT.	INSP. RPT.	ITEM	ORDER	SECTION OR COMPLAINT NO.	VIOLATION DESCRIPTION
08-10-64	N		186	45	M	78 M/D LAW PROPERLY SECURE THE LOOSE TOILET SEAT 5TH STY EAST APT 5E BATHROOM.
08-10-64	N		187	42A	M	78 M/D LAW REPLACE WITH NEW THE MISSING WINDOW STOP 5TH STY EAST APT 5E FRONT ROOM.
08-10-64	N		188	411	M	75 M/D LAW PROVIDE ADEQUATE SUPPLY OF COLD WATER FOR THE FOLLOWING FIXTURES AT 5TH STY EAST APT 5E KITCHEN.
						LAST ITEM 188

0000106	19430	1	**********NOT TO BE USED FOR INSPECTION**********										
PRINC. HOUSE NO.	STREET CODE	SC-B-AREA	INSPECTION DATE	BADGE NO.	RE DAYS	A-I	C-L	Target	Items	PUBP.	SERIAL NUMBER	TCKT.	CONTINUED ON

SHOW CAUSE OR INSPECTOR RECOMMENDATIONS: ☐ INSPECTOR'S SIGNATURE

INSPECTION OF PUBLIC PARTS: EGRESS YES ☐ NO ☐ CELLAR YES ☐ NO ☐

SUPERVISOR DATE	REVIEWER DATE	INSPECTION CONTROL	DATA PROC. UNIT	BOROUGH CONTROL - TO FILE

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

JULES D. ZALON, being duly sworn, deposes and says that he is over 18 years of age.

that on the 14th day of December, 1964, he served a true copy of the withinganswer on Omal Realty Corporation, petitioner herein, by depositing the same, properly enclosed in a securely sealed, post-paid wrapper, in a U.S. Post Office box at 40 East 49th Street, in the County of New Yokr, and the State of New York, directed to said petitioners at 276 5th Ave., New York City (c/O Archie Brin, Esq.) that being their place where they keep an office for the regular transaction of business, and the last address mentioned in the papers last served by them.

JULES D. ZALON

Sworn to before me this
14th day of December, 1964

Notory Public

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

Index No. 99553

OMAL REALTY CORPORATION,
Landlord,

-against-

JOSEFINA LUGO,
Tenant.

Notice of Appearance & Answer

S I R :

PLEASE TAKE NOTICE, that the tenant, JOSEFINA LUGO, hereby appears in ths action and that the undersigned has been retained as attorney for said defendant and demands that you serve all papers in this action upon the undersigned at the address below.

PLEASE TAKE FURTHER NOTICE, that the tenant hereby interposes the following answer to the complaint:

1. General Denial.

2. Landlord did not donform to the requirements of Section 735 of the Real Property Actions and Proceedings Law.

3. Failure of Consideration.

4. Partial Eviction.

AS AND FOR A SEPARATE AND DISTINCT DEFENSE THIS DEFENDANT ALLEGES:

5. On the 6th day of October, 1964, tenant and landlord entered into an agreement, a copy of which is annexed hereto. Landlord has breached this contract, thereby relieving tenant of her obligation for further payment of rent.

AS AND FOR A SEPARATE AND DISTINCT DEFENSE THIS DEFENDANT ALLEGES:

6. The amount demanded by the landlord is this cause of action is prohibited by and contravenes the statutory law and public policy of the State of New York, and landlord is demanding and amount in excess of that allowed by the Rent and Rehabilitation Administration, in violation of § 8590, McK. Unconsol. Laws.

7. In the alternative: A defense of Section 755 of the Real Property Actions and Proceedings Law.

Yours, etc.

JULES D. ZALON, ESQ.
40 East 49th Street
New York, N.Y.

TO: Omal Realty Corp.
c/o Archie Brin, Esq.
276 5th Ave., New York, N.Y.

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

Index No. 99554

OMAL REALTY CORPORATION,
Landlord,

-against-

VICTOR MARQUEZ,
Tenant.

Notice of Appearance & Answer

S I R :

PLEASE TAKE NOTICE, that the tenant, VICTOR MARQUEZ, hereby appears in this action and that the undersigned has been retained as attorney for said defendant and demands that you serve all papers in this action upon the undersigned at the address stated below.

PLEASE TAKE FURTHER NOTICE, that the tenant hereby interposes the following answer to the complaint:

1. General Denial.

2. Landlord did not conform to the requirements of Section 735 of the Real Property Actions and Proceedings Law.

3. Failure of Consideration.

4. Partial Eviction.

AS AND FOR A SEPARATE AND DISTINCT DEFENSE THIS DEFENDANT ALLEGES:

5. On the 6th day of October, 1964, tenant and landlord entered into an agreement, a copy of which is annexed hereto. Landlord has breached this contract, thereby relieving tenant of his obligation for further rent payment.

AS AND FOR A SEPARATE AND DISTINCT DEFENSE THIS DEFENDANT ALLEGES:

6. The amount demanded by the landlord in this cause of action is prohibited by, and contravenes the statutory law and public policy of the State of New York, as the landlord is demanding an amount in excess of that allowed by the Rent and Rehabilitation Administration, in violation of § 8590, McK. Unconsol. Laws.

7. In the alternative: A defense of Section 755 of the Real Property Actions and Proceedings Law.

Yours, etc.

JULES D. ZALON, ESQ.
40 East 49th Street
New York, N.Y.

TO: Omal Realty Corp.
c/o Archie Brin, Esq.
276 5th Ave.
New York, N.Y.

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

Index No. 99555

OMAL REALTY CORPORATION, Landlord, -against- TIRSO VELASQUEZ, Tenant.	Notice of Appearance & Answer

S I R :

PLEASE TAKE NOTICE, that the tenant, TIRSO VELASQUEZ, hereby appears in this action and that the undersigned has been retained as attorney for said defendant and demands that you serve all papers in this action upon the undersigned at the address stated below.

PLEASE TAKE FURTHER NOTICE, that the tenant hereby interposes the following answer to the complaint:

1. General Denial.

2. Landlord did not conform to the requirements of Section 735 of the Real Property Actions and Proceedings Law.

3. Failure of Consideration.

4. Partial Eviction.

AS AND FOR A SEPARATE AND DISTINCT DEFENSE THIS DEFENDANT ALLEGES:

5. On the 6th day of October, 1964, tenant and landlord entered into an agreement, a copy of which is annexed hereto. Landlord has breached this contract, thereby relieving tenant of her obligation for further rent payment.

AS AND FOR A SEPARATE AND DISTINCT DEFENSE THIS DEFENDANT ALLEGES:

6. The amount demanded by the landlord in this cuase of action is prohibited by, and contravenes the statutory law and public policy of the State of New York, as the landlord is demanding an amount in excess of that allowed by the Rent and Rehabilitation Administration, in violation of § 8590, McK. Unconsol. Laws.

10. In the alternaitve,A defense of Section 755 of the Real Property Actions and Proceedings Law.

Yours, etc.

JULES D. ZALON, ESQ.
40 East 49th Street
New York, N.Y.

TO: Omal Realty Corp.
c/o Archie Brin, Esq.
276 5th Ave., New York, N.Y.

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

Index No. 99557

OMAL REALTY CORPORATION,
Landlord,

-against-

JOHN AROMI,
Tenant.

Notice of Appearance & Answer

S I R :

PLEASE TAKE NOTICE, that the tenant, JOHN AROMI, hereby appears in this action and that the undersigned has been retained as attorney for said defendant and demands that you serve all papers in this action upon the undersigned at the address below.

PLEASE TAKE FURTHER NOTICE, that the tenant hereby interposes the following nawer to the complaint:

1. General Denial.

2. Landlord did not conform to the requirements of Section 735 of the Real Property Actinns and Proceedings Law.

3. Failure of Consideration.

4. Partial Eviction.

AS AND FOR A SEPARATE AND DISTINCT DEFENSE THIS DEFENDANT ALLEGES:

5. On the 6th day of October, 1964, tenant and landlord entered into an agreement, a copy of which is annexed hereto. Landlord has breached this contract, thereby relieving tenant of his obligation for futther rent payment.

AS AND FOR A SEPARATE AND DISTINCT DEFENSE THIS DEFENDANT ALLEGES:

6. The amount demanded by the landlord in this cause of action is ypohibited by, and contravenes the statutory law and public policy of the State of New York, and the landlord is demanding an amount in excess of that allowed by the Rent and Rehabilitation Administration, in violation of §8590, McK. Unconsol Laws.

7. In the alternative: A defense of Section 755 of the Real Property Actions and Proceedings Law.

Yours, etc.

JULES D. ZALON, ESQ.
40 East 49th Street
New York City

TO: Omal Realty Corp;
c/o Archie Brin, Esq.
276 5th Ave., New York, N.Y.

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

Index No. 98410

ANN GRIDLEY,
Landlord,

-against-

JANE WILLIAMS,
Tenant.

Notice of Appearance & Answer

S I R :

PLEASE TAKE NOTICE, that the tenant, JANE WILLIAMS, hereby appears in this action and that the undersigned has been retained as attorney for said defendant and demands that you serve all papers in this action upon the undersigned at the address stated below.

PLEASE TAKE FURTHER NOTICE, that the tenant hereby interposes the following answer to the complaint herein:

1. The petition is not signed by a person who is an owner or agent for the owner, and that therefore the Court does not have jurisdiction.

2. This action is brought in the name of a person who is not the landlord nor the real party in interest and that therefore the Court does not have jurisdiction.

3. Without waiving tenant's objection to the jurisdiction of the Court herein: General Denial.

4. Without waiving tenant's objection to the jurisdiction of the Court herein: Landlord did not conform to the requirements of Section 735 of the Real Property Actions and Proceedings Law.

5. Without waiving tenant's objectinn to the jurisdiction of the Court herein: Failure of Consideration.

6. Without waiving tenant's objection to the jurisdiction of the Court herein: Partial Eviction.

AS AND FOR A SEPARATE AND DISTINCT DEFENSE THIS DEFENDANT ALLEGES:

7. Without waiving tenant's objection to the jurisdiction of the Court herein: On the 6th day of October, 1964, tenant entered into an agreement with Omal Realty Corporation, owner of the premises in question, which agreement was signed for the said corporation by Joseph Di Girolimo, the deponent and petitioner in this action, a copy of which agreement is annexed hereto, in which agreement the owner promised to make certain substantial repairs or replacements, or cause same to be made, and to complete such repairs or replacements on or before the 1st day of November, 1964, in default of which, tenant would be relieved of further payment of rent, without prejudice to tenant's right to remain in possession of the said property. Owner has breached this contract by not making, or causing to be made, the repairs or replacements, thereby relieving tenant of her obligation for further rent payment. Owner has continued to breach the said contract by not taking the required action called for under the contract in the event of non-compliance. Complainant is therefore denied any right to sue for said rent, as complainant's rights are subject to, and no greater than, the owner's.

AS AND FOR A SEPARATE AND DISTINCT DEFENSE THIS DEFENDANT ALLEGES:

8. On or about August 26, 1964, a determination was made and finally ordered by the Rent and Rehabilitation Administration of the City of New York, reducing the rent for the apartment herein from $38.71 to $23.23 per month. The docket

number for the said action is 2TM 66768-777, for the UPPER MANHATTAN RENT OFFICE, 541 West 145th Street, New York, N.Y.

There is an existing final order in the Rent and Rehabilitation Administration, which has competent jurisdiction, rendered on the merits, which order has not been superceded or changed, and the defendant alleges that said determination is "res judicata" and is a complete bar to the maintenance of this proceeding, in that the petitioner is demanding an amount in excess of, and in violation of, law.

AS AND FOR A SEPARATE AND DISTINCT DEFENSE THIS DEFENDANT ALLEGES:

9. Without waiving tenant's objection to the jurisdiction of the Court herein: The claim which is the subject matter of the cause of action set forth in the complaint in the above entitled action is prohibited by and contravenes the statutory law and public policy of the State of New York by reason of the fact that the landlord is demanding money in excess of that allowed by the Rent and Rehabilitation Administration of the City of New York, in violation of § 8590 of the Unconsolidated Laws of the State of New York, and § 61 of the Rent and Eviction Regulations, McK. Unconsol. Laws, Book 65, Part 3.

10. In the alternative, and without waiving tenant's objection to the jurisdiction of the Court herein: A defense of Section 855 of the Real Property Actions and Proceedings Law.

Yours, etc.

JULES D. ZALON, ESQ.
40 East 49th Street
New York, N.Y.

TO: Ann Gridley & Joseph DiGirolimo
2912 Park Ave.
New York, N.Y.

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

Index No. 98411

ANN GRIDLEY,

Landlord,

-against-

JOSEFINA LUGO, Tenant.

Notice of Appearance & Answer

S I R :

PLEASE TAKE NOTICE, that the tenant, JOSEFINA LUGO, hereby appears in this action and that the undersigned has been retained as attorney for said defendant and demands that youswerve all papers in this action upon the undersigned at the address stated below.

PLEASE TAKE FURTHER NOTICE, that the tenant hereby interposes the following answer to the complaint herein:

1. The petition is not signed by a person who is an owner of agent for the owner, and that therefore the Court does not have jurisdiction.

2. This action is brought in the name of a person who is not the landlord nor the real party in interest and that therefore the Court does not have jurisdiction.

3. Without waiving tenant's objection to the jurisdiction of the Court herein: General Denial.

4. Without waiving tenant's objection to the jurisdiction of the Court herein: Landlord did not conform to the requirements of Section 735 of the Real Property Actions and Proceedings Law.

5. Without waiving tenant's objection to the jurisdiction of the Court herein: Failure of Consideration.

6. Without waiving tenant's objection to the jurisdiction of the Court herein: Partial Eviction.

AS AND FOR A SEPARATE AND DISTINCT DEFENSE THIS DEFENDANT ALLEGES:

7. Without waiving tenant's objection to the jurisdiction of the Court herein: On the 6th day of October, 1964, tenant entered into an agreement with Omal Realty Corporation, owner of the premises in question, which agreement was signed for the corporation by Joseph Di Girolimo, the deponent and petitioner in this action, a copy of which agreement is annexed hereto, in which agreement the owner promised to make certain substantial repairs or replacements, or cause same to be made, and to complete such repairs or replacements on or before the 1st day of November, 1964, in default of which, tenant would be relieved of further payment of rent, without prejudice to tenant's right to remain in possession of the said property. Owner has breached this contract by not making, or causing to be made, the repairs or replacements, thereby relieving tenant of her obligation for further rent payment. Owner has continued to breach the said contract by not taking the required action called for under the contract in the event of non-compliance. Complainant is therefore denied any right to sue for said rent, as complainant's rights are subject to, and no greater than, the owner's.

AS AND FOR A SEPARATE AND DISTINCT DEFENSE THIS DEFENDANT ALLEGES:

8. Without waiving tenant's objection to the jurisdiction to the Court herein: On or about August 26, 1964, a determination was made and finally [redacted] ordered by the Rent and Rehabilitation Administration of the City of New York, reducing the rent

for the apartment herein from $73.37 to $44.02 per month. The docket number for the said action is 2TM 66768-777, for the UPPER MANHATTAN RENT OFFICE, 541 West 145th St., New York, N.Y.

There is an existing final order in the Rent and Rehabilitation Administration, which has competent jurisdiction, rendered on the merits, which order has not been superceded or changed, and the defendant alleges that said determination is "res judicata" and is a complete bar to the maintenance of this proceeding, in that the petitioner is demanding an amount in excess of, and in violation of, law.

AS AND FOR A SEPARATE AND DISTINCT DEFENSE THIS DEFENDANT ALLEGES:

9. Without waiving tenant's objection to the jurisdiction of the Court herein: The claim which is the subject matter of the cause of action set forth in the complaint in the above entitled action is prohibited by and contravenes the statutory law and public policy of the State of New York by reason of the fact that the landlord is demanding money in excess of that allowed by the Rent and Rehabilitation Administration of the City of New York, in violation of § 8590 of the Unconsolidated Laws of the State of New York, and § 61 of the Rent and Eviction Regulations, McK. Unconsol. Laws, Book 65, Part 3.

10. In the alternative, and without waiving tenant's objection to the jurisdiction of the Court herein: A defense of Section 755 of the Real Property Actions and Proceedings Law.

Yours, etc.

JULES D. ZALON, ESQ.
40 East 49th Street
New York, N.Y.

TO: Ann Gridley & Joseph DiGirolimo
2912 Park Ave.
New York, N.Y.

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

Index No. 98412

ANN GRIDLEY,
Landlord,

-against-

PEDRO COLON,
Tenant.

Notice of Appearance & Answer

S I R :

PLEASE TAKE NOTICE, that the tenant, PEDRO COLON, hereby appears in this action and that the undersigned has been retained as attorney for said defendant and demands that you serve all papers in this action upon the undersigned at the address stated below.

PLEASE TAKE FURTHER NOTICE, that the tenant interposes the following answer to the complaint herein:

1. The petition is not signed by a person who is an owner or agent for the owner, and that the Court therefore does not have jurisdiction.

2. This action is brought in the name of a person who is not the landlord nor the real party in interest and that therefore the Court does not have jurisdiction.

3. Without waiving tenant's objection to the jurisdiction of the Court herein: General Denial.

4. Without waiving tenant's objection to the jurisdiction of the Court herein: Landlord did not conform to the requirements of Section 735 of the Real Property Actions and Proceedings Law.

5. Without waiving tenant's objection to the jurisdiction of the Court herein: Failure of Consideration.

6. Without waiving tenant's objection to the jurisdiction of the Court herein: Partial Eviction.

AS AND FOR A SEPARATE AND DISTINCT DEFENSE THIS DEFENDANT ALLEGES:

7. Without waiving tenant's objection to the jurisdiction of the Court herein: On the 6th day of October, 1964, tenant entered into an agreement with Omal Realty Corporation, owner of the premises in question, which agreement was signed for the said corporation by Joseph Di Girolimo, the deponent and petitioner in this action, a copy of which agreement is annexed hereto, in which agreement the owner promised to make certain substantial repairs or replacements, or cause same to be made, and to complete such repairs or replacements on or before the 1st day of November, 1964, in default of which, tenant would be relieved of further payment of rent, without prejudice to tenant's right to remain in possession of the said property. Owner has breached this contract by not making, or causing to be made, the repairs or replacements, thereby relieving tenant of his obligation for further rent payment. Owner has continued to breach the said contract by not taking the required action called for under the contract in the event of non-compliance. Complainant is therefore denied any right to sue for the said rent, as complainant's rights are subject to, and no greater than, the owner's.

AS AND FOR A SEPARATE AND DISTINCT DEFENSE THIS DEFENDANT ALLEGES:

8. Without waiving tenant's objection to the jurisdiction of the Court herein: On or about October 21, 1963, a determination was made and finally ordered by the Rent and Rehabilitation Administration of the City of New York, reducing the rent for the

apartment herein from $37.00 to $29,60 per month. The docket number for the said action is 2T 27487-496, for the UPPER MANHATTAN RENT OFFICE, 541 West 145th Street, New York, N.Y.

There is an existing final order in the Rent and Rehabilitation Administration, which has competent jurisdiction, rendered on the merits, which order has not been superceded or changed, and the defendant alleges that said determination is "res judicata" and is a complete bar to the maintenance of this proceeding, in that the petitioner is demanding an amount in excess of, and in violation of, law.

AS AND FOR A SEPARATE AND DISTINCT DEFENSE THIS DEFENDANT ALLEGES:

9. Without waiving tenant's objection to the jurisdiction of the Court herein: The claim which is the subject matter of the cause of action set forth in the complaint in the above entitled action is prohibited by and contravenes the statutory law and public policy of the State of NeweYork by reason of the fact that the landlord is demanding money in excess of that allowed by the Rent and Rehabilitation Administration of the City of New York, in violation of § 8590 of the Unconsolidated Laws of the State of New York, and § 61 of the Rent and Eviction Regulations, McK. Unconsol. Laws, Book 65, Part 3.

10. In the alternative, and without waiving tenant's objection to the jurisdiction of the Court herein: A defense of Section 755 of the Real Property Actions and Proceedings Law.

Yours, etc.

JULES D. ZALON, ESQ.
40 East 49th Street
New York, N.Y.

TO: Ann Gridley & Joseph DiGirolimo
2912 Park Ave.
New York, N.Y.

December 15, 1964

Trial of the rent strike cases

Omal Realty Corporation vs. Colon, Williams and Josefina Lugo.

Cases consolidated for trial on consent

Archie Brin, Esq. Appearing for petitioner

cases are to be joined with eight other cases for trial on the adjourned date of December 22, 1964.

The only witness called was DiGirolimo, and he hardly had a chance to say anything. We immediately got into a discussion, somewhat informally, about the contract, and Brin stated specifically:

> Your honor, we admit that there is a contract here, and concede its validity, but Mr. DiGirolimo insists /that the terms have been complied with/

and then went on to suggest that the money be paid into court.

I answered that the defendants do not consider that the terms have in any way been met (i.e., completion), although I did state that there was some work, and quite a bit of work done under its terms. I made a point of telling why the contract was worded as it was, i.e., full completion before any more rent was to be paid, and respectfully insisted that the defendants were not prepared to make any payments at all until the landlord had completed his part of the bargain.

(I believe that I made a good impression on the judge, as I explained the situation from the beginning, stressing that the tenants were not making trouble, and in fact paid moneys previously held up, on the writing of the agreement...as a show of good faith; and that they insisted on such wording in anticipation of the freezing weather soon to come, and the fear of (mutual) of braving such conditions alone.)

I spoke to the Judge after the adjournment, and asked him to explain what he meant by one phrase, suggesting that it might have been taken to mean that if there were no violations shown to the court in the normal manner (Subpoena of the records) that we would not be able to sustain our claim. He then said that he merely meant that if there were no violations so shown, that we could not rely on the regulations, and would be left with our courtact which we would have to prove by proper evidence/testimony.

> I wanted this, since the dept of buildings does not have an adequate record of conditions, and their "snow-job" inspections might tend to hurt our case more than help it. I just didn't want such records before the court.

DiGirolimo stated on direct examination that all the work had been done. THIS IS VERY IMPORTANT, since he's liable to come into court Tuesday and claim that:

1. by our own statements, we waived the time condition of the contract (we didn't; we only said that we were not insisting that it be kept to the letter, as we knew he was doing some work and were willing to allow him as much time as might be necessary) and then,

2. inasmuch as we have waived this time condition, he still has time to complete; that he attempted to complete; and that the tenants did not provide access as stipulated in the contract.

The answer to this would be:

1. he stated that the work was done, and when I discussed the possibility of the two of us going up there to inspect it and determine finally what was what, he refused even to discuss the matter with me. Hence: he showed that he did not consider the idea of further work up there.

2. The contract terms do not suggest that each of the tenants have to be home all day long in the wild, and implausable hope that perhaps the landlord will send someone up there that day.

Other tidbits:

1. the landlord must prove the maximum rent allowable under the law, as part of his case, and if this is not shown, the case would probably have to be adjourned until he could so prove it....by a certified extract from the R.& R.A. Only trouble: we don't really want to have the tenants come back again, and miss another day's work. SO: get an extract from the Upper Manhattan Office for $2- each, and have it ready for the trial---

2. Somewhere in the CPLR, there is a section which states that a material inaccuracy is grounds for dismissal of the suit. (It's just common sense) Also: the pleadings in a summary proceeding are construed striclty against the petitioner, inasmuch as such actions are extraordinary in nature.

BUT: we would seem to be better advised to actually proceed, and get a jdt in our favor. Possibility: test the sufficiency of our position by demanding a dismissal on all but one case. (?)

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

Index No.

OMAL REALTY CORPORATION, Landlord, -against- Tenant(s)	Notice of Appearance & Answer

S I R :

PLEASE TAKE NOTICE, that the tenant, , hereby appears in this action and that the undersigned has been retained as attorney for siadx defendant and demands that you serve all papers in this action upon the undersigned at the address stated below.

PLEASE TAKE FURTHER NOTICE, that the tenant hereby ~~xhxex~~ interposes the following answer to the complaint herein:

1. ~~Thexpexxxxxonxandxnexxxex~~ Service of the notice and petition in no way conformed to the provisions of § 735 of the Real Property A. & P. Law, and ~~xhexefexe~~ that therefore the Court does not have jurisdiction.

2. Without waiving tenant's objection to the jurisdiction of the Court herein: General Denial

~~3. Without waiving tenant's objection to the jurisdiction of the Court herein. Landlord did not conform to the requirements of Section 735 of the~~

3. Without waiving tenant's objection to the jurisdiction of the Coutt herein: Failure of Consideration

4. Without waiving tenant's objection to the jurisdiction of the Court herein: Partial Eviction.

1. These buildings are being kept in a state of disrepair which borders on inhuman conditions. This is in direct violation of the laws of this State.

2. Unfortunately, there is no adequate method of enforcing these laws against the landlord. The parties are presently engaged in a running game of tag in the Criminal Court; tenants making out 2040's for lack of heat, hot water, and other essential services; landlord carrying a stack of summonses in his pocket right this moment, and telling me on more than one occasion, that if they don't pay the rent immediately, rentI should add that is not now presently due under this contract, that he'll serve them all, and force them to miss another day's work.

His exact words usually are: after all, Mr. Zalon, this is the only thing that thesepeople understand; if I don't get my money, they aren't going to get theirs.

The complaints that I've read state that the tenant has maintained a nuisance by leaving things piled in the hallways. In fact, the only thing that I noticed in any of the public areas of the buildings was a gigantic pile of rotten wood piled up in front of the building...which is a violation itself.

When the tenants have appeared in court to hear the charges of 2040, as often as not, the landlord has not appeared, thus causing the tenant to further miss work, which, as Mr. DiGirolimo puts it, is the only thing that these people understand.

3. With the cold weather just around the corner, the tenants spoke to me in early October, and at that time, told me that they were not interested in a long, drawn-out fight with the landlord, even though they thought that they were in the right; they only wished to be assured that they wouldn't freeze this Winter, as they had other Winters. They were also not interested in depriving the landlord of his rent for any violation which might be around...They just wanted to be warm this Winter.

4. It was at this point that I approached Mr. DiGirolimo, at their request, and they all agreed to pay all their rent, which they had been keeping in money orders, and Mr. DiGir- guaranteed that they would have their heat and hot water by November 1st. Both parties at this point seemed to be acting in complete good faith.

5. November 1st has come and gone; so has December 1st. And a week from Friday will be January 1st. However, Mr. DiGir- has not completed the work he started. In fact, there has been no improvement in more than a month. Only the weather has now gotten so bad that Mrs. Lugo, xxxxxxxxxxxxxxxxx has to share apartments with others who are lucky enough to have heat. She is literally being frozen out of her apartment; so also is Mrs. Williams; and Mr. Caballero; and Mr. Aromi, and Mr. Marquez.

add Mrs Vigueta + mentally dig

This is just the thing that the tenants were afraid of a few months ago. And this is just the reason that the idea of this contract appealed to them. After all, Mr. DiGirolimo has assured them all that there was only a little work which still had to be done; allhe said he wanted was the money. And since they were not trying to avoid their obligations, and in fact had collected the rent money x in money orders before the 1st of the month, they had no reason to hold up this rent. All they wanted was the assurance that they wouldn't have to look forward to what they are now looking back on.....and what they are now living with; NO HEAT OR HOT WATER.

Tenants, by their very status in these buildings, have very little bargaining power. Any tenant who decides to take on the landlord, no matter how badly the building is being kept up, is truly trying to fight city hall. The xxx landlord may serve summonses at will; after all, most of these landlords do not have regular work hours. In fact, many of them spend a good part of their day in court. This causes the xxxxxx individual tenant to miss a day's work, and at their salary, they cannot miss too many, not even considering the stability of their job, which is jeopardized every time they miss work. If the tenant attempts to serve a 2040 on the landlord, they must miss anotherxx day's work, and there is no guarantee that xxx either the case will be dicided, or even thatx the landlord will show up in Court. Hence, more days out of work.

All that the tenant can do is hold up his rent. Of course, this entails more days out of work, xxxxx as he will be sued for eviction at once. If he is fortunate enough to have an attorney, perhaps the department of buildings record of outstanding violations will be subpoenaed. Even if it is shown thatx the buildings are being x kept woefully inadequate, the only recourse is § 755 of the Real Property A&P Law.

This procedure is unfortunately handicapped by the simple facts of administrative life. The department is frightfully under-staffed. xxxxx also, unless the building is completely organized, the chances are that the inspector will not fully inspect the particular apartment. Two reasons: (1) it is the practice of the department not to disclose exactly when the inspection is going to be made; (2) each inspector probably has too many buildings

to inspect each day to allow him to go completely through the building or apartment involved. Hence, the record, if any, is not going to give an accurate xxxxxx picutre of the conditions then____existing.

Also, once the money is paid into court, there will be a re-inspection to check xxx as to whether or not the violations have been cleared up. From what has already been said about original inspections, there is no reason to believe that a reinspection will be any better. However, it has been my experience that reinspections are the most hastily performed operations carried out by the department. Almost never do they show anything which was not on the x original violation card. And unless each particular item is pointed out to them, they will not even note persisting violations.

We see therefore, that under this kind of approach, the tenant is forced to miss three days of work, without settling anything necessarily. And this is assuming that the inspector x happens to come just the days that the tenant stays out from work. Since they do not tell tenants when they'll come, it is very possible, even probable, that this number will at least double. The

This individual tenant simply cannot thus compete with a large landlord, one that we're dealing with here. Before there is any guarantee of slight satisfaction, he has put himself close to the poorhouse. He has endangered his job. He has jeopardized his tenancy. He has created a feeling of bad-will with the landlord. He has, in fact, become the victim of a procedure which x was drawn up to protect him.

Withholding of rent therefore, is simply not a satisfactory solution. To a x landlord acting in good faith, it is also a useless inexpedient to adjusting differences between parties. In fact, any time xxxxxxxxxxxxx people with small claims can avoid the courts, they are much better off.

The contract embodies the wishes of all the parties. It was entered in apparent good faith. If carried out completely, both parties would (1) have just what they had bargained for; (2) and in addition created an atmosphere upon which could be built a most healthy landlord-tenant relationship. Any major improvements would warrant an adjustment of the maximum allowable rent and it would have been worth it to the tenants.

THIS / THEY

The individual tenant must have better protection. They can get it only by dealing as a group.

+ he admits it. Last week, in court ~~[illegible]~~, he suggested that any L tenants w/ heat + hot water pay rent. "As + L attorney, they don't have to pay rent."

The contract has not, however, been performed by the landlord. He has breached it, and has continued to breach it. And now he comes into court, in direct violation of the law, and of the contract, and demands money to which he is not entitled. The contract has served his interests: it got him his money back in October; now he does not consider that it serves him any longer, and he wishes to ignore it. HE MAY NOT IGNORE IT!

Although the contract has not been satisfied, it has given certain individual tenants the protection which they would not have had had they not united. By denying the landlord rent money outright until he completes work which he was legally bound to do in the first place, it does assure these cold people that the landlord will give them their heat and hot water (to which they are lawfully entitled w/o a contract) before he collects one cent of rent money.

And that, I suggest your Honor, is the only thing that the landlord understands.

But now the landlord comes and says: well, I've finished some of the work. Why not let me have the rent money for just those apartments, and the others don't have to pay now.

The reason, if it is not readily apparent, is: that the only way that these tenants can get any satisfaction, is to continue united as before. If the tenants were to give the landlord any money now, when he has continued to violate the contract, they are letting the less fortunate of them, Mrs. Lugo, Williams, etc. sink or swim alone. setting them against - making them individuals again + we can't call- THIS IS JUST WHAT THEY K'd against! THIS IS NOT WHAT THEY K'd 4!

If the landlord did absolutely nothing to improve conditions in many of these apartments with the threat of total rent abatement facing him, is it concievable that he will have the slightest impetus or motivation to do the work when this threat is removed? Of course not!

Your Honor, last week the issues were specifically drawn. They were drawn by the landlord himself when, by his attorney, he stated: Your, Honor, we admit that there is a contract here, and concede its validity; but Mr. DiGirolimo insists/that the terms have been complied with/.

The evidence given here today make it painfully obvious that in fact the terms have not been complied with. This is a material and substantial breach of the contract. Therefore, as a matter of law, the petitioner must lose this action.

And at this time, I most respectfully so move.

AGREEMENT entered into as of the 6th day of October 1964, between JOSEPH DI GIROLIMO, hereinafter referred to as OWNER, and those other parties executing this agreement, tenants in two buildings at 106 and 108 East, 124th Street, and hereinafter collectively referred to as TENANTS.

WHEREAS ~~Joseph di Girolimo~~ OHAL REALTY CORPORATION is the owner of two buildings at 106 and 108 East 124th Street, borough of Manhattan, City and State of New York (hereinafter referred to as BUILDINGS); and

WHEREAS, a dispute has arisen as to OWNER's duty to repair the said buildings and tenants' obligation to pay rent for occupancy in such buildings;

THEN, in consideration of $10.00 paid by tenants to owner, and other good and valuable consideration known by the parties:

1. TENANTS and each of them shall pay on the execution of this agreement all rents due and payable up to and including the rent for October 1, 1964, as such rents are registered at the Rent and Rehabilitation Administration, in New York City, and as such rents are listed at the foot of this agreement, receipt of which is hereby acknowledged.

2. OWNER agrees to promptly repair or cause to be repaired plumbing and other facilities in both buildings necessary for adequate water pressure and sufficient hot water for the buildings and to complete all of such repairs or replacements on or before ~~October 15~~ Nov 1, 1964.

3. If for any reason the owner does not timely undertake and complete such repairs and replacements, then all rents paid upon the execution of this agreement shall promptly be returned to the tenatns and no further rents shall become due or payable by reason of occupancy of the buildings by such tenants (without

prejudice to their right to remain in possession) until such repair or replacements are completed.

4. If the owner does undertake to repair the buildings he shall give written notice of completion of such to tenants. If such repairs are not to the complete satisfaction of the tenants, then the tenants shall have the right to demand that an inspection be made by the Department of Buildings, the inspector to be specially chosen by Commissioner Judah Gribetz, which inspector shall inspect the buildings at a time chose by the tenants. The inspection shall be made within ten (10) days from receipt of such written notice or as soon thereafter as is possible. This inspector's determination of complete satisfaction, made in writing and signed also by Commissioner Judah Gribetz, or the person next below him in the same office, shall be binding upon the tenants. Tenants agree to make their apartments available for such inspection.

If the owner shall give written notice to the effect that the repairs or replacements have been completed by ~~October 19~~ Nov 1, 1964, and either the tenants are satisfied with same or the inspection mentioned in Paragraph4 is to the complete satisfaction of the inspector, then the normal rent shall continue to be paid by the tenants hereafter.

If owner does not undertake and complete such repairs and replacements by ~~October 19~~ November 1, 1964, but thereafter does undertake and complete such repairs and replacements, then, he shall give written notice to tenants to that effect. If the repairs or replacements are to the complete satisfaction of the tenants, then rent shall become due and payable as of the date of receipt of such written notice. However, if the repairs or replacements are not to the complete satisfaction of the tenants, tenants shall have the same right to demand an inspection as is specified in Paragraph 4. If a statement of complete satisfaction is issued by the Department of Buildings,

as specified in Paragraph 4, then the rent shall become due and payable as of the date of receipt of such written notice by the owner.

Joseph Di Girolimo Pres
JOSEPH DI GIROLIMO for OHAL REALTY CORP.

TENANTS

108 East, 124 Street

1W	Pura Velez	$48.16 ✓
1E	Jose Caballero	61.36 ✓
2W	Luis Borrero	61.36 ✓
3W	Carlos Martinez	51.76 ✓
3E	Aurelio Herrera	81.44 ✓
~~4E~~	Esther Rosario	53.12 ✓
5E	Andres Thillet	~~60.76~~ 3038.
4W	PEDRO COLON	59.20 ✓

1038

106 East, 124 Street

1W	Mauricio DeJesus	✓ ~~47.76~~ 2388
2W	May Marshall	✓ 28.11
2E	Tirso Velasquez	30.79 ✓
3W	Jose Lugo	44.16 ✓
4W	Ramon Aromi	~~42.32~~ ~~2116~~ 2116
4E	Angelina Marquez	59.04 ✓
5W	Fanny Williams	46.46 ✓
5E	Josefina Lugo	44.02 ✓

JULES D. ZALON
For the Tenants

Tenants also agree to make their apartments available for access for such repairs as reasonable notice from Owner.

B 300—Notice of Appearance, Answer and Demand for Bill of Particulars, Civil Court. b

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80 EXCHANGE PLACE AT BROADWAY, NEW YORK

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

Index Number 99928

OMAL REALTY CORPORATION — Plaintiff

against

PEDRO COLON — Defendant

Defendant's Address
108 East 124th St
New York, N.Y.

Notice of Appearance, Answer and Demand for Bill of Particulars

SIR : PLEASE TAKE NOTICE, that the defendant, PEDRO COLON,

hereby appear S in this action and that the undersigned h$ been retained as attorney for said defendant and demand$ that you serve all papers in this action upon the undersigned at the address stated below.

PLEASE TAKE FURTHER NOTICE, that the defendant hereby interpose the following answer to the complaint herein:

1. General Denial.

2. Landlord did not conform to the requirements of Section 735 of the Real Property Actions and Proceedings Law.

3. Failure of Consideration.

4. Partial Eviction.

AS AND FOR A SEPARATE AND DISTINCT DEFENSE THIS DEFENDANT ALLEGES:

PLEASE TAKE FURTHER NOTICE [illegible] ing par[illegible]

5. On the 6th day of October, 1964, landlord and tenant entered into an agreement, a copy of which is attached hereto. Landlord has breached this contract, thereby relieving tenant of his obligation for further rent payment.

AS AND FOR A SEPARATE AND DISTINCT DEFENSE THIS DEFENDANT ALLEGES:

6. The amount demanded by the landlord exceeds the amount to which he is lawfully entitled by the Rent and Rehabilitation Administration, thereby violating the statutory law and public policy of the State, as encompassed in § 8590, McK. Unconsol. Laws.

7. In the alternative: A defense of Section 755 of the Real Property Actions and Proceedings Law.

Dated, New York, December 15, 1964

To Omal Realty Corporation
c/o Edwin A. Livingston, Esq.
148 E. 121st St. New York City
Attorney(s) for Plaintiff

To the Clerk of the Civil Court of the City of New York

Yours, etc. JULES D. ZALON, ESQ.
c/o Schiffer & Cohen
40 E. 49th St. N.Y.C.
Attorney(s) for Defendant

Office; Post Office Address; Telephone No.

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF

Index Number 99928

OMAL REALTY CORPORATION

Plaintiff

against

JANE ROSARIO

Defendant

Defendant's Address
108 E. 124th St. NYC

Notice of Appearance, Answer and Demand for Bill of Particulars

SIR PLEASE TAKE NOTICE, *that the defendant* JANE ROSARIO,

hereby appear s *in this action and that the undersigned ha* s *been retained as attorney for said defendant and demand* s *that you serve all papers in this action upon the undersigned at the address stated below.*

PLEASE TAKE FURTHER NOTICE, *that the defendant hereby interpose the following answer to the complaint herein:*

1. General Denial.

2. Landlord did not conform to the requirements of § 735 of the Real Property Actions and Proceedings Law.

3. Failure of Consideration.

4. Partial Eviction.

AS AND FOR A SEPARATE AND DISTINCT DEFENSE THIS DEFENDANT ALLEGES:

PLEASE TAKE FURTHER NOTICE, *that you are hereby required to file and serve the following particulars of plaintiff's alleged cause of action herein:*

5. On the 6th day of October, 1964, landlord and tenant entered into an agreement, a copy of which is attached hereto. Landlord has breached this contract, thereby relieving tenant of further rent payments.

AS AND FOR A SEPARATE AND DISTINCT DEFENSE THIS DEFENDANT ALLEGES:

6. The amount demanded by the landlord exceeds the amount to which the landlord is lawfully entitled, thereby violating the statutory law and public policy of the State, as encomplassed in § 8590, McK. Unconsol. Laws.

7. In the alternative, A defense of § 755 of the Real Property Actions and Proceedings Law.

Dated, New York, Dec. 15, 1964

To Omal Realty Corpration
c/o Edwin A. Livingston, Esq.
148 E. 121st St. New York City

Attorney(s) for Plaintiff

To the Clerk of the Civil Court of the City of New York

Yours, etc. JULES D. ZALON, ESQ.
c/o Schiffer and Cohen

Attorney(s) for Defendant

Office; Post Office Address; Telephone No.
40 East 49th Street,
New York, N.Y. PLaza 2-8060

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF

OMAL REALTY CORPORATION

Plaintiff

against

JOHN HERRERA

Defendant

Index Number 99931

Defendant's Address
108 E. 124th St. NYC

Notice of Appearance, Answer and Demand for Bill of Particulars

SIR : PLEASE TAKE NOTICE, *that the defendant*, JOHN HERRERA,

hereby appears in this action and that the undersigned has been retained as attorney for said defendant and demands that you serve all papers in this action upon the undersigned at the address stated below.

PLEASE TAKE FURTHER NOTICE, *that the defendant hereby interposes the following answer to the complaint herein:*

1. General Denial.

2. Landlord did not conform to the requirements of § 735 of the Real Property A. and P. Law.

3. Failure of Consideration.

4. Partial Eviction.

PLEASE TAKE FURTHER NOTICE, *that you are hereby required to file and serve the following particulars*

AS AND FOR A SEPARATE AND DISTINCT DEFENSE THIS DEFENDANT ALLEGES:

5. On the 6th day of October, 1964, landlord and tenant entered into an agreement, a copy of which is annexed hereto. Landlord has breached this contra ct, thereby relieving tenant of any further rent payments.

AS AND FOR A SEPARATE AND DISTINCT DEFENSE, THIS DEFENDANT ALLEGES:

6. The amount demanded by the landlord exceeds the amount to which the landlord is lawfully entitled, thereby violating the statutary law and public policy of the State, as encompassed in § 8590 of the Unconsolidated Laws of New York.

7. In the alternative: A defense of § 755 of the Real Property A. and P. Laws.

Dated, New York, Dec. 15, 1964

To Omal Realty Corp.
c/o Edwin A. Livingston, Esq.
148 E. 121st St. N.Y.C.

Attorney(s) for Plaintiff
To the Clerk of the Civil Court of the City of New York

Yours, etc. JULES D. ZALON, ESQ.
c/o Schiffer and Cohen

Attorney(s) for Defendant
Office; Post Office Address; Telephone No.
40 East 49th Street
New York, N.Y.
PLaza 2-8060

B 300—Notice of Appearance, Answer and Demand for Bill of Particulars, Civil Court. b

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF

Index Number 99932

Defendant's Address
108 E. 124th St. NYC

OMAL REALTY CORPORATION

Plaintiff

against

PURA VELEZ

Defendant

Notice of Appearance, Answer and Demand for Bill of Particulars

SIR PLEASE TAKE NOTICE, that the defendant , PURA VELEZ,

hereby appears in this action and that the undersigned has been retained as attorney for said defendant and demands that you serve all papers in this action upon the undersigned at the address stated below.

PLEASE TAKE FURTHER NOTICE, that the defendant hereby interposes the following answer to the complaint herein:

1. General Denial.

2. Landlord did not conform to the requirements of § 735 of the Real Property A. & P. Laws.

3. Failure of Consideration.

4. Partial Eviction.

P[redacted]ing parti[redacted]

AS AND FOR A SEPARATE AND DISTINCT DEFENSE THIS DEFENDANT ALLEGES:

5. On the 6th day of October, 1964, landlord and tenant entered into an agreement, a copy of which is annexed hereto. Landlord has breached this contract, thereby relieving the tenant of her obligation for further rent payment.

AS AND FORK A SEPARATE AND DISTINCT DEFENSE THIS DEFENDANT ALLEGES:

6. The amoulnt demanded by the landlord exceeds the amount to which the landlord is lawfully entitled, thereby violating the statutory law and public policy of the State, as encompassed is § 8590 of the Real Proprty A.&P. Laws.

7. In the alternative: A defense of § 755 of the Real Property Actions and Proceedings Law.

Dated, New York, Dec. 15, 1964

To Omal Realty Corp.
c/o Edwin A. Livingston, Esq.
148 E. 121st St., New York City

Attorney(s) for Plaintiff

To the Clerk of the Civil Court of the City of New York

Yours, etc.

JULES D. ZALON, ESQ.
c/o Schiffer and Cohen

Attorney(s) for Defendant

Office; Post Office Address; Telephone No.
40 East 49th St.
New York, N.Y.
PLaza 2-8060

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF

OMAL REALTY CORPORATION

Plaintiff

against

JOSEPH CABALLERO,

Defendant

Index Number 99933

Defendant's Address
108 East 124tg St
New York, N.Y.

Notice of Appearance, Answer and Demand for Bill of Particulars

SIR PLEASE TAKE NOTICE, *that the defendant* , JOSEPH CABALLERO,

*hereby appear*S *in this action and that the undersigned ha*S *been retained as attorney for said defendant and demand*S *that you serve all papers in this action upon the undersigned at the address stated below.*

PLEASE TAKE FURTHER NOTICE, *that the defendant hereby interpose*S *the following answer to the complaint herein:*

1. General Denial.

2. Landlord did not conform to the requirements of § 735 of the Real Peoperty A.&P. Law.

3. Failure of Consideration.

4. Partial Eviction.

P[redacted] *ing part*[redacted]

AS AND FOR A SEPARATE AND DISTINCT DEFENSE THIS DEFENDANT ALLEGES:

5. On the 6th day of October, 1964, landlord and tenant entered into an agreement, a copy of which is annexed hereto. Landlord has breached this contract, thereby relieving defendant of his obligation for further payment of rent.

AS AND FOR A SEPARATE AND DISTINCT DEFENSE THIS DEFENDANT ALLEGES:

6. The amount demanded by the landlord exceeds the amount to which the landlord is lawfully entitled, thereby violating the statutory law and public policy of the State, as encompassed in § 8590 of the Real Property A.&P. Law.

7. In the alternative: A defense of § 755 of the Real Propetty A.&P. Law.

Dated, New York, December 15, 1964

To Omal Realty Corporation
c/o Edwin A. Livingston, Esq.
148 East 121st St. New York City

Attorney(s) for Plaintiff

To the Clerk of the Civil Court of the City of New York

Yours, etc. JULES D. ZALON, ESQ.
c/o Schiffer & Cohen, Esq.

Attorney(s) for Defendant

Office; Post Office Address; Telephone No.
40 East 49th Street
New York, N.Y.
PLaza 2-8060

B 300—Notice of Appearance, Answer and Demand for Bill of Particulars, Civil Court. b

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80 EXCHANGE PLACE AT BROADWAY, NEW YORK

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF

Index Number 99930

OMAL REALTY CORPORATION,

Plaintiff

against

JOHN MARTINEZ,

Defendant

Defendant's Address
108 East 124th St.
New York, N.Y.

Notice of Appearance, Answer and Demand for Bill of Particulars

SIR PLEASE TAKE NOTICE, that the defendant , JOHN MARTINEZ,

hereby appear in this action and that the undersigned ha been retained as attorney for said defendant and demand that you serve all papers in this action upon the undersigned at the address stated below.

PLEASE TAKE FURTHER NOTICE, that the defendant hereby interpose the following answer to the complaint herein:

1. General Denial.

2. Landlord did not conform to the requirments of § 735 of the Real Property A.&P. Law.

3. Failure of Colnsideration.

4. Partial Eviction.

~~PLEASE TAKE FURTHER NOTICE, that you are hereby required to file and serve the following particulars of plaintiff's alleged cause of action herein:~~

AS AND FOR A SEPARATE AND DISTINCT DEFENSE THIS DEFNEDANT ALLEGES:

5. On the 6th day of October, 1964, landlord and tenant entered into an agreement, a copy of which is annexed hereto. Landlord has breached this contract, thereby relieving tenant of his obligation for further rent payments.

AS AND FOR A SEPARATE AND DISTINCT DEFENSE THIS DEFENDANT ALLEGES:

6. The amount demanded by the landlord exceeds that which he is entitled to under the law, thereby violating the statutory law and public policy of the State, as encompassed in § 8590 of the Real Property A.§P. Law.

7. In the alternative: A defense of § 755 of the Real Property A.&P. Law.

Dated, New York, Dec, 15, 1964

To Omal Realty Corppration
c/o Edwin A. Livingston, Esq.
148 East 121st. Street, New York City

Attorney(s) for Plaintiff

To the Clerk of the Civil Court of the City of New York

Yours, etc.

JULES D. ZALON, ESQ.
c/o Schiffer and Cohen

Attorney(s) for Defendant

Office; Post Office Address; Telephone No.

40 East 49th Street
New York City
PLaza 2-8060

THE CITY OF NEW YORK

CITY RENT and REHABILITATION ADMINISTRATION

ROBERT F. WAGNER
MAYOR

HORTENSE W. GABEL
ADMINISTRATOR

RENT, EVICTION AND REHABILITATION REGULATIONS

PART IX. PROTESTS

Section 91. **Persons who may file protests.**

a. Any person aggrieved by these Regulations or by an order issued by a District Rent and Rehabilitation Director may file a protest to the Administrator in the manner provided in these Regulations.

b. A joint protest, verified by each person joining therein, may be filed by two or more landlords or tenants, where at least one ground is common to all persons so filing. The Administrator, in his discretion, may treat such protest as joint or several.

c. The Administrator may, in his discretion, consolidate two or more protests which have at least one ground in common.

Section 92. **Time for filing protests.**

a. A protest against any provision of these Regulations may be filed at any time after the effective date thereof.

b. A protest against an order of a District Rent and Rehabilitation Director must be filed with the Administrator within 33 days after the date such order is issued unless paragraph c of this section is applicable. A protest served by mail, postmarked not more than 33 days after the date of such order, shall be in compliance with this paragraph.

c. Where a certificate of eviction has been granted upon the basis of the landlord's immediate and compelling necessity, a protest may be filed by a tenant after the expiration of the thirty-three-day period provided for in paragraph b of this section and prior to the date of the issuance of a final order by a court in summary dispossess proceedings, where there has been a change of circumstances due to the fact that other suitable housing accommodations subject to landlord's control have become vacant since the date of the order granting the certificate of eviction..

Section 93. **Form and content of protest against these Regulations or portion thereof.** No printed form of protest is provided or prescribed. Each protest against these Regulations or portion thereof must be clearly designated "Protest to the City Rent and Rehabilitation Administrator re: Section ..... (or Sections .....) of the Rent, Eviction and Rehabilitation Regulations," and shall set forth the following:

a. The name and post-office address of the party filing the protest, and whether he is a landlord or tenant, or representative.

b. A complete identification of the provision or provisions protested, citing the section or sections of these Regulations to which the objection is made.

c. A simple concise statement of the objections to these Regulations or portion thereof protested.

d. A specific statement of the relief requested.

e. Each protest shall be verified by the party filing the protest.

Section 94. **Form and content of protest against an order of the District Rent and Rehabilitation Director.** No printed form of protest is provided or prescribed. Each protest must be clearly designated "Protest to the City Rent and Rehabilitation Administrator re: Order bearing docket number .....," and shall set forth the following:

a. The name and post-office address of the party filing the protest, and whether he is the landlord or tenant of the accommodations involved or a representative.

b. A complete identification of the order to which objection is made, the date of issuance thereof, the docket number, and the name of the District Rent and Rehabilitation Office.

c. The location by post-office address of all housing accommodations involved in the protest.

d. The names and post-office addresses of all other parties affected by the protest.

e. A simple, concise statement of the objections to the order protested.

f. A specific statement of the relief requested.

g. A statement informing the person served with the protest that he may within 15 days from the date of such service, file a verified answer thereto, by filing the same with the City Rent and Rehabilitation Administrator, 280 Broadway, New York 7, New York, together with proof of service of a copy of the answer upon the party filing the protest.

h. Each protest shall be verified by the party filing the protest.

i. Each such protest shall contain proof of service of (a) a copy of the protest and (b) copies of all accompanying papers upon the District Rent and Rehabilitation Director and upon all parties affected by the protest.

Section 95. **Service and filing of protests.**

a. Each protest shall be filed in an original and one copy at the Principal Office of the Administrator, 280 Broadway, New York 7, New York.

b. Where the protest is against an order issued by a District Rent and Rehabilitation Director, a copy of the protest shall also be served on the District Rent and Rehabilitation Director issuing the order being protested and upon each party affected by the protest.

c. A protest under Section 94 will not be accepted for filing unless accompanied by an affidavit or other proof of such service.

Section 96. **Time of filing answer to protest.** Any person served with a protest as provided in Section 94i of these Regulations, may, within 15 days from the date of service, file a verified answer thereto, by filing the same with the City Rent and Rehabilitation Administrator, together with proof of service of a copy thereof upon the party filing the protest. The Administrator may, in his discretion, and for good cause shown, extend the time within which to answer.

Section 97. **Action by Administrator.** Within a reasonable time after the filing of the protest and the answers, if any, the Administrator may:

a. Reject the protest if it is insufficient or defective.

b. Make such investigation of the facts, hold such conferences, and require the filing of such reports, evidence, affidavits, or other material relevant to the proceeding, as he may deem necessary or appropriate.

c. Forward to or make available for inspection by either party any relevant evidence and afford an opportunity to file rebuttal thereto.

d. For good cause shown accept for filing any papers, even though not filed within the time required by these Regulations.

e. Require any person to appear or produce documents or both pursuant to a subpoena issued by the Administrator.

f. Grant or order a hearing.

Section 98. **Final determination by the Administrator.** The Administrator, on such terms and conditions as he may determine, may:

a. Dismiss the protest if it fails substantially to comply with the provisions of the Rent Law or these Regulations.

b. Grant or deny the protest, in whole or in part, or remand the proceeding to the District Rent and Rehabilitation Director for further action.

c. In the event that the Administrator grants or denies any such protest in whole or in part, the Administrator shall inform the party or parties filing the protest of the grounds upon which such decision is based, and of any economic data and other facts of which the Administrator has taken official notice.

Section 99. **Pending protests.** Where a Regulation is amended during the pendency of a protest, the determination shall be in accordance with the amended Regulation.

Section 100. **Time within which the Administrator shall take final action.**

a. If the Administrator does not act finally within a period of 90 days after a protest is filed, or within such extended period as may be fixed by the Administrator with the consent of the party filing the protest, the protest shall be deemed to be denied.

b. If the Administrator does not act finally within a period of 90 days after the entry of an order of remand to the Administrator by the court in a proceeding pursuant to Section 102 of these Regulations, or within such extended period as may be fixed by the Administrator with the consent of the party filing the petition for review under Article 78 of the Civil Practice Act, the order previously made by the Administrator shall be deemed reaffirmed.

Section 101. **Stays.**

a. The filing of a protest against an order, other than an order adjusting, fixing or establishing a maximum rent, within 33 days after the date of the issuance of such order, shall stay such order until the final determination of the protest by the Administrator. Where the protest is against an order granting a certificate of eviction, it shall stay such order as herein provided regardless of whether the waiting period provided in the order has already expired.

b. The commencement of a proceeding by the Administrator to revoke or cancel an order granting a certificate of eviction shall stay such order until the final determination of the proceeding, regardless of whether the waiting period in the order has already expired.

Section 102. **Judicial Review.** The filing and determination of a protest is a prerequisite to obtaining judicial review of any provision of these Regulations or any order issued thereunder, except as provided by §Y41-8.0 of the Rent Law. A proceeding for review may be instituted under Article 78 of the Civil Practice Act, provided the petition is filed within 30 days after the final determination of the protest. Service of the petition upon the Administration shall be made by leaving a copy thereof with the office of Counsel to the City Rent and Rehabilitation Administration at its Principal Office, 280 Broadway, New York 7, New York.

Section 103. **Modification or revocation of orders on protest.** The Administrator, on application of either party or on his own initiative, and upon notice to all parties affected, may, prior to the date on which a proceeding for judicial review has been commenced in the Supreme Court pursuant to Article 78 of the Civil Practice Act, modify, supersede or revoke any order issued by him under these Regulations, or any order issued under previous Regulations, where he finds that such order was the result of illegality, irregularity in vital matters, or fraud. Where an order is modified, superseded or revoked by the Administrator, he may also direct that rent collected by the landlord in excess of the maximum rent be refunded to the tenant within 30 days.

THE CITY OF NEW YORK
CITY RENT and REHABILITATION ADMINISTRATION
280 Broadway
New York 7, New York

Operational Bulletin No. C-15 Supplement No. 3 (Issued July 12, 1963) - Rental Values; Electrical Rewiring; Revision of Administrator's Interpretation No. 1

Administrator's Interpretation No. 1, revised May 10, 1963, is hereby revised by changing the schedule of rental values in the following respects:

(a) The monthly charge of $2.75 shall apply to buildings less than seven stories in height.

(b) The monthly charge of $4.00 shall apply to buildings of seven or more stories in height.

Administrator's Interpretation No. 1 is hereby further revised by changing the last paragraph of such Interpretation to read as follows:

"The rewiring standards and schedule of rental values herein will apply to all installations where a contract was entered into between the landlord and a licensed electrical contractor or where an application for a certificate of electrical inspection was filed on or after May 22, 1962. Where such contract was entered into and where the application for a certificate of electrical inspection was filed prior to May 22, 1962, the State Administrator's Opinion #117 will continue to be applicable provided that such rewiring shall have been commenced in good faith prior to August 1, 1963 and thereafter the work was diligently prosecuted to completion."

Except as hereinabove provided, Administrator's Interpretation No. 1 shall continue to be in effect as revised on May 10, 1963.

HORTENSE W. GABEL
Administrator

THE CITY OF NEW YORK

CITY RENT and REHABILITATION ADMINISTRATION

ROBERT F. WAGNER
MAYOR

HORTENSE W. GABEL
ADMINISTRATOR

INSTRUCTION SHEET No. 4

OPERATOR'S RE-REGISTRATION STATEMENT FOR ROOMING HOUSES AND SINGLE ROOM OCCUPANCY ACCOMMODATIONS

All items on the Re-Registration Statement (Report Form R-8) *must* be completed in accordance with the instructions hereinafter set forth. Your failure to comply with these instructions will result in the rejection of your Re-Registration Statement. All items must reflect the information as it existed on July 16, 1962.

Filing Instructions

The Re-Registration Statement *must* be filed in *triplicate* by certified mail or in person at the Principal Office of the City Rent and Rehabilitation Administration, 280 Broadway, New York 7, N. Y. no later than September 17, 1962 together with a building diagram indicating all accommodations in the building or structure. This diagram may be on one or more sheets of paper of 8½" x 11" in dimension. Photostatic copies of diagrams, previously submitted to the New York City Department of Buildings in 1957, or later, or approved alteration plans submitted for issuance of a certificate for single room occupancy are acceptable in lieu of such diagram, *provided that such copy is legible* and is no larger than 11" x 18" in dimension and that the following information is clearly indicated thereon:

(a) full dimensions of each room;

(b) floor identification;

(c) present room identification;

(d) former room identification as used on the Registration Statement filed pursuant to the Federal Act or the State Rent Act:

(e) location of bathroom facilities; and

(f) location of community kitchen facilities, if any.

Where a diagram is filed with the Re-Registration Statement it must include the above information.

One copy of the Re-Registration Statement (Report Form R-8) will be returned to the Operator.

Identification of individual rooms

In completing the Re-Registration Statement be sure that each unit designation corresponds with the identifications used on the diagram submitted and that the information set forth under each of the numbered items refers to the indicated unit. *Present identification must also be affixed to the outside of the entrance door to the unit and may not be removed or changed without prior written permission from the District Rent and Rehabilitation Director.*

Failure to file statement

Where a landlord fails to file a Re-Registration Statement as required by the Regulations the District Rent and Rehabilitation Director may fix maximum rents for the establishment. In addition no application by the landlord for rent increases under any Section of the Regulations will be accepted.

Report Form R-8 is designed for the re-registration of 20 units. Additional copies of Report Form R-8 may be obtained from the District Rent Office or the Principal Office at 280 Broadway, New York 7, N.Y. if the structure includes more than 20 units. At the upper right hand corner of the face of such form print "Sheet No. 1", etc. Each sheet must be separately numbered. Also complete Items 1 to 4, inclusive, on each sheet, as well as the date and signature of Operator. The additional sheet(s) *must* be filed in triplicate and fastened to Sheet No. 1.

THE CITY OF NEW YORK

CITY RENT and REHABILITATION ADMINISTRATION

ROBERT F. WAGNER
MAYOR

HORTENSE W. GABEL
ADMINISTRATOR

ADMINISTRATOR'S INTERPRETATION No. 8

(Issued February 28, 1964)

§33.1—Conversion of a central heating system from coal-fired to an oil- or gas-fired system and the modernization of existing oil- or gas-fired system as the basis for the increase of maximum rents pursuant to Section 33.1 c of the Regulations.

Two landlords owning buildings more than 30 years old have requested advice as to whether replacement and modernization of the heating systems in these buildings would be considered a substantial rehabilitation or a major capital improvement pursuant to the provisions of Sections 33.1 b and 33.1 c of the Rent, Eviction and Rehabilitation Regulations. They also inquire as to the rent increase which would be granted for replacement or modernization of these heating systems.

One landlord owns a building which has a manually coal-fired furnace; the other landlord owns a building which has an oil-fired system over 20 years old. The landlords claim that the heating systems have been overhauled and repairs made but that breakdowns continue to occur with increasing frequency. They contend that the heating systems are obsolete and can no longer regularly provide uninterrupted service.

The Administrator notes that last year, for example, there were 115,808 complaints of insufficient heat filed with the City Department of Health. In addition, the City Department of Air Pollution Control reports the filing of an annual average of 20,000 complaints involving residential buildings. Further, old, defective or poorly functioning heating systems constitute serious fire hazards. According to the Fire Department, there were 2,187 fires in heating units in 1962, of which 79 percent were in oil burners. There were also 2,820 emergencies (smoking oil burners and other mal-functioning equipment) where no fires broke out.

In many cases the equipment involved not only has deteriorated, but has become obsolete. Repairs often cannot be made because replacement parts are no longer manufactured. Further, during the past 20 years there have been marked technical improvements to produce better heating service. The Administrator initiated a study of the various factors involved in the replacement or modernization of heating systems so as to determine an equitable solution of the problem.

In carrying forward this study, the Administrator consulted with various City officials, heating equipment manufacturers and contractors, fuel suppliers and other organizations which were of assistance in affording technical advice and information.

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In carrying forward this study, the Administrator consulted with various City officials, heating equipment manufacturers and contractors, fuel suppliers and other organizations which were of assistance in affording technical advice and information.

The study indicates that there is a 30 year life expectancy for steel or cast iron boilers and a 20 year life expectancy for gas burners and oil burners and the accompanying fuel storage tanks. Some of the aforementioned equipment, 20 or 30 years old, as the case may be, may still be operational and its replacement at this time may not be necessary.

Based upon this study, the Administrator has determined that the replacement or modernization of existing heating systems where necessary is a major capital improvement required for the operation, preservation and maintenance of the buildings within the meaning of Section 33.1 c of the Rent, Eviction and Rehabilitation Regulations. Such replacement or modernization, however, must meet the minimum standards of the basic modernization requirements set forth below and the landlords must comply with the procedures hereinafter set forth. In addition, all installations must be made with new equipment and have a capacity to satisfy both heat and hot water service obligations of the landlords. These installations must result in a fully automatic heating system and be in compliance with all applicable requirements of law.

BASIC MODERNIZATION REQUIREMENTS

(a) **complete oil-burning modernization**—The installation shall include a new boiler with either a tankless hot water coil or a separate new hot water boiler, a new oil-burner, and a new fuel storage tank(s). It shall also include all new controls and electrical wiring.

(b) **complete natural gas modernization**—The installation shall include a new boiler with either a tankless hot water coil or a separate new hot water boiler, and a new gas-fired burner. It shall also include all new controls and electrical wiring.

(c) **partial oil-burning rehabilitation**—The installation shall include either

(1) a new boiler with either a tankless hot water coil or a separate new hot water boiler, new boiler controls and electrical wiring, reconditioning and re-installation of existing burner; or

(2) a new oil-burner (consisting of a burner, combustion chamber, controls, and electrical wiring) which is installed in the existing boiler and new fuel storage tank(s).

(d) **new natural gas-burning rehabilitation**—The installation shall include a gas burner (consisting of burner, controls and electrical wiring) which is installed in the existing boiler.

No rent increases will be granted for replacement or modernization of the heating system unless there is a certification by a registered architect or professional engineer that such replacement or modernization was necessary. In the case of gas-burning equipment or small oil-burner installations which fire 2½ G.P.H. or less, certification by a licensed plumber or heating contractor will also be acceptable.

The study further reveals that the cost of replacement or modernization is dependent upon the type of installation and the number of rooms in the building. Accordingly, the Administrator has established the following schedule of maximum rental values:

SCHEDULE OF MAXIMUM RENTAL VALUES

The rent adjustment granted will be computed upon a 12 year amortization of actual cost *or* the amount claimed in the Building Department permit, whichever is lower. *The adjustment, however, may not exceed the following (per room - per month) schedule of increases*:

Number of Rooms in Structure*	Type of Modernization (See "*Basic Modernization Requirements*")				
	(a)	(b)**	(c)(1)	(c)(2)	(d)
12 – 16	.75	.70	.50	.25	.30
17 – 24	.60	.55	.40	.20	.25
25 – 39	.55	.45	.35	.20	.20
40 – 96	.45	.35	.30	.20	.15
97 – 184	.40	x	.25	.20	x
185 – 400	.30	x	.20	.15	x

*Where two or more buildings share a common heating system the "number of rooms in structure" shall be the aggregate room count for all buildings tied into the heating system.

**Where there had been a conversion less than 20 years prior to the current modernization and the boiler is over 30 years old, the maximum rental value for a complete natural gas modernization shall be limited to the rental values indicated in column (c)(1).

PROCEDURES

The maximum rent schedule indicated above will apply to all replacements or modernizations of heating systems, except:

(a) oil heating system modernizations involving more than 400 rooms or unique and peculiar circumstances; and

(b) gas heating system modernizations involving more than 96 rooms,

for which the landlord should apply for a prior opinion before commencing the work.

Where the indicated rental value schedule is applicable it will not be necessary for a landlord to request a prior opinion.

Where in a building containing more than 96 rooms a gas heating system is the subject of the proposed modernization, the application for a prior opinion should be accompanied by a statement from the public utility supplying the gas service approving the proposed installation as to size and type of installation.

After completion of the work the landlord should file an application for rent increases pursuant to Section 33.1 c of the Regulations on Application Form A-33.1HM (Landlord's Application for Increase of Maximum Rent—Major Capital Improvements—Heating System Modernization). In his application the landlord should briefly describe the heating system which was replaced or modernized and the work which is the basis for the application. The following shall also be submitted with the application:

(1) A certificate of the City Department of Buildings stating either that no violations against such property are recorded in the index maintained by its Central Violations Bureau or that all violations have been cleared, corrected or abated.

(2) Copies of all applications made to City departments having jurisdiction over heating system installations and replacements together with proof that provisions of such applications have been fulfilled in compliance with all applicable rules and regulations or requirements of law.

(3) Supplemental Statement (Report Form R-33.1) setting forth the landlord's total costs and expenses for the work together with a copy of the contracts, cancelled checks or other evidence of expenditures. If any part of the work was financed by a loan, such report shall also include that information and a statement from whom or what source the loan was obtained and the terms thereof.

(4) A certification by a registered architect or a professional engineer that such replacement was necessary. In the case of gas-burning equipment or small oil-burner installations which fire 2½ G.P.H. or less, certification by a licensed plumber or heating contractor will also be acceptable.

(5) An affidavit of the landlord and/or registered architect, professional engineer or heating system contractor attesting to the age of the equipment which was replaced.

(6) A total unit count for the premises, together with the room count for each apartment, including professional or commercial space and accommodations occupied by the landlord and service employees, and stores, if any. Also included in this count are decontrolled or exempt accommodations. Include in the room count the following:

(a) Kitchens, bedrooms, dining rooms, finished basement or attic rooms, recreation rooms, and other rooms suitable for use as living quarters. A kitchenette or "half-room" which is partitioned off from floor to ceiling should be counted as a separate room; but, a combined kitchenette and dinette, separated only by shelves or cabinets, should only be counted as one room.

(b) Rooms used for office purposes.

(c) Substitute for area of store space the room count for residential space directly above store.

The following are not to be included in the room count: Bathrooms, strip or pullman kitchens, halls, foyers, alcoves, pantries, laundries, closets, storage space, and basement or attic rooms which are not suitable for living quarters.

(7) A list of all stores on the premises, stating for each store the following: type of business, whether the store is serviced by a separate hot water boiler or uses the building supply, and the room count for the same area on the upper floors of the building.

As a condition of filing an application for and receiving orders increasing maximum rents the landlord must certify and establish that he is maintaining essential services.

This interpretation shall be applicable to replacements or modernizations of heating systems where the work was commenced on or after May 1, 1963.

THE CITY OF NEW YORK

CITY RENT and REHABILITATION ADMINISTRATION

ROBERT F. WAGNER
MAYOR

HORTENSE W. GABEL
ADMINISTRATOR

RENT, EVICTION AND REHABILITATION REGULATIONS

AMENDMENT No. 11

Effective August 12, 1964

[Amending Sections 21d, 65, 71a, b and c, 71d(5), 71e, 102 and 103]

Promulgated by the City Rent and Rehabilitation Administration pursuant to the City Rent and Rehabilitation Law [Local Law No. 20 for the Year 1962, as amended by Local Law No. 67 for the year 1963, and Local Law No. 13 for the year 1964, Title Y of Chapter 51 (formerly being Chapter 41 and renumbered by Chapter 100 of the Laws of 1963) of the Administrative Code of the City of New York] and filed with City Clerk on August 12, 1964.

AMENDMENT No. 11

The Rent, Eviction and Rehabilitation Regulations are hereby amended as follows:

Section 21 is hereby amended by changing paragraph d to read as follows:

d. For housing accommodations in an establishment which the Administrator finds no longer to be a hotel, where such accommodations were not subject to rent control because such establishment was a hotel on March 1, 1950, the maximum rent shall be the rent charged on the date six months immediately prior to the date of issuance of the notice of commencement of proceedings to determine that these Regulations shall apply to the housing accommodations in such establishment, or on the date of first renting, whichever is later, subject, however, to adjustment as provided by Section 33.1 of these Regulations.

Section 65 is hereby amended to read as follows:

Section 65. **Security deposits.** Regardless of any contract, agreement, lease or other obligation heretofore or hereafter entered into, no person shall demand, receive or retain a security deposit for or in connection with the use and occupancy of housing accommodations, except: (a) if the demand, collection, or retention of such security deposit was permitted under the Rent Regulations promulgated pursuant to the Federal Act, or the local laws of the City of New York, and said security deposit does not exceed the rent for one month in addition to the authorized collection of rent; or (b) if the demand, collection, or retention of such security deposit was pursuant to a rental agreement with the tenant and said security deposit does not exceed the rent for one month (or for one week where the rental payment period is for a term of less than one month) in addition to the authorized collection of rent, provided that said security deposit shall be deposited in a banking organization no later than July 15, 1960 or within 15 days after receipt thereof, whichever is later; and so long as the landlord complies with the provisions of Section 7-103 of the General Obligations Law and Section 1302-a of the Penal Law.

Section 71 is hereby amended by changing paragraphs a, b and c to read as follows:

a. Any person who wilfully violates any provision of Section 1 (9) of the State Enabling Act or Section Y51-10.0 of the City Rent and Rehabilitation Law and any person who makes any statement or entry false in any material respect in any document or report required to be kept or filed under the Rent Law, or any regulation, order, or requirement thereunder, and any person who wilfully omits or neglects to make any material statement or entry required to be made in any such document or report, shall, pursuant to Sections 1 (9) and 1 (10) of the State Enabling Act, upon conviction thereof, be guilty of a crime as specified in such Section 1 (10) and shall be punishable as prescribed in such Section 1 (10), namely: such person shall be subject to a fine of not more than $5,000, or to imprisonment for not more than 2 years in the case of a violation of Paragraph (c) of Section 1 (9) of the State Enabling Act or Subdivision c of Section Y51-10.0 of the City Rent and Rehabilitation Law, and for not more than 1 year in all other cases, or to both such fine and imprisonment.

b. If any landlord who receives rent from a tenant violates a regulation or order of the State Rent Commission or the City Rent and Rehabilitation Administration prescribing the maximum rent with respect to the housing accommodations for which such rent is received from such tenant, the tenant paying such rent may, within 2 years from the date of the occurrence of the violation, except as hereinafter provided, bring an action against the landlord on account of such overcharge pursuant to Subdivision e of Section Y51-11.0 of the Rent Law. Under circumstances specified in that section of the Rent Law, the Administrator may bring an action against the landlord for such overcharge.

c. If any landlord who receives rent from a tenant violates any order of the Administrator containing a directive that rent collected by the landlord in excess of the maximum rent be refunded to the tenant within 30 days, the Administrator may, within 1 year after the expiration of such 30 day period or after the date on which such order shall become a final order, as such term is defined in Section 3 (c) of these Regulations, bring an action against the landlord on account of the failure of the landlord to make the prescribed refund pursuant to Subdivision

f of Section Y51-11.0 of the Rent Law. Under circumstances specified in that section of the Rent Law, the tenant may bring an action against the landlord for such failure to refund. Where judgment is rendered in favor of the Administrator in such action, there shall be paid over to the tenant from the moneys recovered, one-third of such recovery, exclusive of the costs and disbursments.

Section 71 is hereby further amended by changing subparagraph (5) of paragraph d to read as follows:

(5) For some purpose other than those specified above for which the removal of the tenant was sought and the landlord has failed to use the vacated premises for such purpose; such landlord shall, unless for good cause shown, be liable to the tenant for three times the damages sustained on account of such removal plus reasonable attorney's fees and costs as determined by the court. In addition to any other damage, the cost of removal of property shall be a lawful measure of damage. The remedy herein provided for shall be in addition to those provided for in Section 71 (e) of these Regulations and Section 1 (10) (a) of the State Enabling Act and Subdivision a of Section Y51-11.0 of the Rent Law, and Section C26-168.1 of the Administrative Code of the City.

Section 71 is hereby further amended by changing paragraph e to read as follows:

e. Where after the State Rent Commission or the Administrator has granted a certificate of eviction authorizing the landlord to pursue his remedies pursuant to law to acquire possession for any purpose stated in Part V of these Regulations or for some other stated purpose, and a tenant voluntarily removes from a housing accommodation or has been removed therefrom by action or proceeding to evict from or recover possession of a housing accommodation and the landlord or any successor landlord of the premises does not use the housing accommodation for the purpose specified in such certificate of eviction, the vacated accommodation or any replacement or subdivision thereof shall, unless the City Rent and Rehabilitation Administration approves such different purpose, be deemed a housing accommodation subject to control, notwithstanding any definition of that term in these Regulations to the contrary. Such approval shall be granted whenever the Administrator finds that the failure or omission to use the housing accommodation for the purpose specified in such certificate was not inconsistent with the purposes of the Rent Law and these Regulations and would not be likely to result in the circumvention or evasion thereof. The remedy herein provided for shall be in addition to those provided for in Section 71 (d) of these Regulations, and Section 1 (10) (a) of the State Enabling Act, and Subdivision a of Section Y51-11.0 of the Rent Law and Section C26-168.1 of the Administrative Code of the City.

Section 102 is hereby amended to read as follows:

Section 102. **Judicial Review.** The filing and determination of a protest is a prerequisite to obtaining judicial review of any provision of these Regulations or any order issued thereunder, except as provided by Section Y51-8.0 of the Rent Law. A proceeding for review may be instituted under Article 78 of the Civil Practice Law and Rules, provided the petition is filed within 30 days after the final determination of the protest. Service of the petition upon the Commission shall be made by leaving a copy thereof with the office of Counsel to the City Rent and Rehabilitation Administration at its Principal Office, 280 Broadway, New York 7, New York.

Section 103 is hereby amended to read as follows:

Section 103. **Modification or revocation of orders on protest.** The Administrator, on application of either party or on his own initiative, and upon notice to all parties affected, may, prior to the date on which a proceeding for judicial review has been commenced in the Supreme Court pursuant to Article 78 of the Civil Practice Law and Rules, modify, supersede or revoke any order issued by him under these Regulations, or any order issued under previous Regulations, where he finds that such order was the result of illegality, irregularity in vital matters, or fraud. Where an order is modified, superseded or revoked by the Administrator, he may also direct that rent collected by the landlord in excess of the maximum rent be refunded to the tenant within 30 days.

STATEMENT OF CONSIDERATIONS FOR THE ISSUANCE OF AMENDMENT NO. 11 TO THE RENT, EVICTION AND REHABILITATION REGULATIONS

Section 21 d of the Regulations was amended in order to provide for a maximum rent for "down-graded" hotels at the rent charged on the date six months prior to the date of the issuance of the notice of commencement of proceedings to determine that the Regulations apply to housing accommodations in such establishment. This does not represent any change in practice of the Administration and conforms the Regulations to the procedure being followed in cases where the Administrator otherwise determines the establishment not to be a hotel. With this amendment maximum rents defined by both paragraphs c and d of Section 21 will be the rent charged on the date six months prior to the date of issuance of the notice of commencement of proceedings to determine the status of the establishment.

Sections 65, 71, 102 and 103 were amended in order to make the statutory references conform with the related statutes which are currently in effect.

THE CITY OF NEW YORK

CITY RENT and REHABILITATION ADMINISTRATION

ROBERT F. WAGNER
MAYOR

HORTENSE W. GABEL
ADMINISTRATOR

INSTRUCTION SHEET No. 4

OPERATOR'S RE-REGISTRATION STATEMENT FOR ROOMING HOUSES AND SINGLE ROOM OCCUPANCY ACCOMMODATIONS

All items on the Re-Registration Statement (Report Form R-8) *must* be completed in accordance with the instructions hereinafter set forth. Your failure to comply with these instructions will result in the rejection of your Re-Registration Statement. All items must reflect the information as it existed on July 16, 1962.

Filing Instructions

The Re-Registration Statement *must* be filed in *triplicate* by certified mail or in person at the Principal Office of the City Rent and Rehabilitation Administration, 280 Broadway, New York 7, N. Y. no later than **September 17, 1962** together with a building diagram indicating all accommodations in the building or structure. This diagram may be on one or more sheets of paper of 8½" x 11" in dimension. Photostatic copies of diagrams, previously submitted to the New York City Department of Buildings in 1957, or later, or approved alteration plans submitted for issuance of a certificate for single room occupancy are acceptable in lieu of such diagram, *provided that such copy is legible* and is no larger than 11" x 18" in dimension and that the following information is clearly indicated thereon:

(a) full dimensions of each room;

(b) floor identification;

(c) present room identification;

(d) former room identification as used on the Registration Statement filed pursuant to the Federal Act or the State Rent Act:

(e) location of bathroom facilities; and

(f) location of community kitchen facilities, if any.

Where a diagram is filed with the Re-Registration Statement it must include the above information.

One copy of the Re-Registration Statement (Report Form R-8) will be returned to the Operator.

Identification of individual rooms

In completing the Re-Registration Statement be sure that each unit designation corresponds with the identifications used on the diagram submitted and that the information set forth under each of the numbered items refers to the indicated unit. *Present identification must also be affixed to the outside of the entrance door to the unit and may not be removed or changed without prior written permission from the District Rent and Rehabilitation Director.*

Failure to file statement

Where a landlord fails to file a Re-Registration Statement as required by the Regulations the District Rent and Rehabilitation Director may fix maximum rents for the establishment. In addition no application by the landlord for rent increases under any Section of the Regulations will be accepted.

Report Form R-8 is designed for the re-registration of 20 units. Additional copies of Report Form R-8 may be obtained from the District Rent Office or the Principal Office at 280 Broadway, New York 7, N.Y. if the structure includes more than 20 units. At the upper right hand corner of the face of such form print "Sheet No. 1", etc. Each sheet must be separately numbered. Also complete Items 1 to 4, inclusive, on each sheet, as well as the date and signature of Operator. The additional sheet(s) *must* be filed in triplicate and fastened to Sheet No. 1.

Instructions for completing specific items
on Re-Registration Form

NOTE: *The term "Rooming House" on the Re-Registration Statement form also refers to apartments or structures used for single room occupancy.*

Items 1 to 10, inclusive: These Items are self-explanatory. Item 2 should correspond with registration number printed on envelope in which this Instruction Sheet No. 4 and forms were mailed to the operator.

Item 11: (*Note—As of January 1, 1963 all rooming houses will be required by Section D26-6.1 of the Multiple Dwelling Code of the City of New York to have a minimum of one bathroom for each six persons and at least one bathroom per floor.*) Where additional bathrooms are installed after the filing of the Re-Registration Statement, an amended diagram *must* be filed with the District Rent and Rehabilitation Office. In such case the landlord may also make application for rent increases pursuant to Section 33.1 c of the Regulations on the basis of such installation of additional bathroom facilities.

Item 12: State on what floor or story unit is located. (This identification *must* correspond with the identification used on the diagram.)

Item 13: Insert designation or identification used on the building diagram.

Item 14: Insert the latest designation or identification used on the Registration Statement filed pursuant to the Federal Act or the State Rent Act.

Items 15 and 16: Indicate with an "X" under the applicable item.

Item 17: If it is claimed that the accommodation is not subject to control, indicate pursuant to what section of the Rent, Eviction and Rehabilitation Regulations decontrol is claimed.

Item 18. Indicate the number of rooms in unit. (Do not count foyers, private halls, bathrooms or water closets.)

Item 19: Indicate the total number of adult occupants plus the number of children two years of age and over who now occupy the unit. (Do not include children born while the parents were in occupancy.)

Items 20 to 28, inclusive: Fill in the rent actually charged or which would be charged for each category. Place circle around the amount which is actually charged to the present tenant.

Item 29: Indicate the number of days per week that maid service is provided. If maid service is not provided to the occupant(s), insert 0 under Item 29.

Item 30. Indicate the number of days per week that change of linen is provided. If linen service is not furnished to occupant(s), insert 0 under Item 30.

Item 31: Direct access from outside or public hall refers to units which may be entered without passage through a room or hallway of another unit. If access is direct, indicate with an "X".

Items 32 to 39, inclusive: These items refer to equipment or services furnished to the indicated unit exclusively.

Items 40 to 42, inclusive: These items refer to equipment and services shared by the occupants of more than one unit.

Items 43 to 45, inclusive: These are self-explanatory.

Item 46: Indicate any item(s) or service or equipment other than those already listed which is (are) furnished to the unit.

Item 47: State the full name of the present tenant. If vacant, write "vacant".

Item 48: Indicate the date present tenant moved into the unit. (Month and year only need be stated.)

THE CITY OF NEW YORK

CITY RENT and REHABILITATION ADMINISTRATION

ROBERT F. WAGNER
MAYOR

HORTENSE W. GABEL
ADMINISTRATOR

INSTRUCTION SHEET No. 5

(Issued December 1, 1963)

INCREASE OF MAXIMUM RENT (INCREASED COSTS—SMALL STRUCTURES) (SECTION 33.6 OF THE REGULATIONS)

Section 33.6 of the Rent, Eviction and Rehabilitation Regulations is designed to give relief to the so-called "non-professional" landlord who owns no more than four rental units (excluding any unit(s) personally occupied by him) within the City, and who for lack of detailed records may not be in a position to establish his right to rent increases based upon a return on the valuation of the property under Section 33.5 of the Regulations. Application Form A-33.6 has been issued by the Administrator for use by landlords wishing to file for rent increases under Section 33.6.

Instructions for preparing and filing an application under this section are printed on Application Form A-33.6 and should be read in conjunction with this Instruction Sheet before completing the application and filing it with the District Rent Office.

On the face of the application form general information is required concerning the property and the rental income derived therefrom. On the reverse side, information should be presented concerning those items of expense which are to be considered. Bills and checks for **all** expenses shown must accompany the application.

Adjustments granted under this section will be determined by computing the total increased costs sustained by the applicant (i.e. the difference between the expenses presented for the current period and those of the base period, reduced by compensating rent increases received from the tenants since the base period). The base period is either 1943, the year when Federal rent control took effect, or the calendar year in which the landlord acquired the property, whichever is later.

Adjustment factors for Heating Fuel and various types of Repair and Maintenance expenses have been established showing the change in the cost for each year since Federal rent control took effect. By applying same to current expenses, the increase in the cost of the various items can be determined. For example, if a landlord has spent $200.00 for heating fuel during the current year and the base period factor is 40, it would indicate that 40% of the $200.00 current expense, or $80.00, represents the increase in cost sustained. The base period expense for heating fuel would thus be recognized as $120.00. **For items of Real Estate Taxes, Insurance, and Utilities, bills must be presented for both base and current periods to establish the actual increase in costs sustained.**

The amount representing the increase in expenses in excess of compensating rental increases received will constitute the adjustment to which a landlord will be entitled under this section.

In no event will a landlord be entitled to an adjustment under this section where he is not maintaining all essential services required to be provided with the housing accommodations.

NO APPLICATION MAY BE FILED UNLESS A CERTIFICATE OF THE DEPARTMENT OF BUILDINGS IS ANNEXED TO THE APPLICATION STATING THAT NO VIOLATIONS AGAINST SUCH PROPERTY ARE RECORDED IN THE INDEX MAINTAINED BY THE CENTRAL VIOLATIONS BUREAU OF SUCH DEPARTMENT.

AMENDMENT No. 4

The Rent, Eviction and Rehabilitation Regulations are hereby amended as follows:

Section 88 is hereby amended by relettering paragraphs d and e to be paragraphs e and f.

Section 88 is hereby further amended by adding thereto a new paragraph d to read as follows:

d. The District Rent and Rehabilitation Director, on his own initiative or on application of a tenant, may revoke or cancel an order granting a certificate of eviction (whether issued by the State Rent Commission or under these Regulations) at any time prior to the date of the issuance of a final order in a summary proceeding to recover possession of real property by a court whenever he finds that there has been a change of circumstances due to the fact that other suitable housing accommodations subject to the landlord's control have become vacant since the date of the order granting the certificate of eviction.

Section 92 is hereby amended by changing paragraph c to read as follows:

c. Where a certificate of eviction has been granted pursuant to Section 55 of these Regulations or the Regulations of the State Rent Commission, a protest may be filed by a tenant after the expiration of the thirty-three day period provided for in paragraph b of this section and prior to the date of the issuance of a final order in a summary proceeding to recover possession of real property by a court, where there has been a change of circumstances due to the fact that other suitable housing accommodations subject to the landlord's control have become vacant since the date of the order granting the certificate of eviction.

STATEMENT OF CONSIDERATIONS FOR THE ISSUANCE OF AMENDMENT No. 4 TO THE RENT, EVICTION AND REHABILITATION REGULATIONS

Section 88 of the Rent, Eviction and Rehabilitation Regulations has been amended by adding a new paragraph d which permits the District Rent and Rehabilitation Director to revoke or cancel an order granting an eviction certificate where other suitable housing accommodations subject to the landlord's control have become vacant since the date of issuance of the certificate provided that no final order was issued by a court in a summary proceeding to evict the tenant.

Paragraph c of Section 92 has been amended in order to permit a tenant to file a protest against an order granting an eviction certificate pursuant to Section 55 of either the City or State Regulations where other suitable housing accommodations subject to the landlord's control become vacant even though more than 33 days have elapsed since the date of issuance of the certificate. Heretofore such right had been limited to cases where the landlord's immediate and compelling necessity was the basis for the issuance of the eviction certificate. This right is now extended to any tenant who is about to be evicted by a landlord desiring the tenant's accommodation for his own use or that of a member of his immediate family. The landlord's failure to use a suitable accommodation subject to the landlord's control which becomes available after the date of the order granting the certificate of eviction or to offer it to the tenant is relevant to the issue of the landlord's good faith. This amendment affords the Administrator the opportunity of reviewing the landlord's application and giving consideration to the new facts. However, it should be noted that after a final order in a summary dispossess proceeding to recover possession has been granted, no protest may properly be filed.

AMENDMENT No. 2

The Rent, Eviction and Rehabilitation Regulations are hereby amended as follows: Section 36 is hereby amended by changing paragraph b to read as follows:

b. (1) Where no registration statement has been filed under the Federal Act, or the State Rent Act, or as required by these Regulations or (2) where no proper or timely registration statement has been filed as required by these Regulations; or (3) where no statement has been filed as required by Section 49 of these Regulations; or (4) where no proper or timely statement has been filed as required by Section 49 of these Regulations; or (5) where the Administrator in a proceeding pursuant to paragraph a of this Section is unable to otherwise determine the maximum rent; or (6) where the maximum rent must be fixed or established by the Administrator, he may issue an order fixing or establishing the maximum rent, having regard for the maximum rents for comparable housing accommodations or any other factors bearing on the equities involved, consistent with the purpose of the Rent Law. Such order shall fix or establish the maximum rent as of May 1, 1950, or the date of first renting, whichever is later, and may contain a directive that all rent collected by the landlord in excess of the maximum rent fixed or established under this paragraph for a period not exceeding two years prior to the date of the issuance of such order shall be refunded to the tenant within 30 days after such order shall become final.

Section 49 is hereby added to read as follows:

Section 49. Reregistration and identification of Rooming House and Single Room Occupancy Accommodations.

a. A statement upon forms prescribed by the Administrator shall be filed in triplicate by the landlord of a rooming house or of single room occupancy accommodations no later than September 17, 1962, together with a building diagram showing the location and designation of every housing accommodation therein in such form and containing such additional information as the Administrator may require. Such statement shall be filed by certified mail or in person at the Principal Office of the Administrator, 280 Broadway, New York 7, New York. Failure to file such statement may result in the establishing of the maximum rents by the Administrator pursuant to paragraph b of Section 36 of these Regulations. In addition, no application for rent increases for any rooming house or single room occupancy accommodations under any section of these Regulations will be accepted unless such statement has been filed.

b. On and after the date of filing such statement, all rooming house and single room occupancy accommodations shall be identified by numerical sequence for the entire establishment or by numerical or alphabetical sequence for each floor or by a combination numerical and alphabetical sequence which identifies both the floor and accommodation. Such designation shall be permanently affixed to the outer side of the entrance door to the accommodation.

c. The identification provided for in paragraph b of this section may not be changed or removed without the prior written permission of the Administrator.

AMENDMENT No. 3

The Rent, Eviction and Rehabilitation Regulations are hereby amended as follows:
Section 2 is hereby amended by changing subparagraph (8) of paragraph f to read as follows:

(8) Housing accommodations which were completed on or after February 1, 1947, except accommodations resulting from substantial demolition, as defined in paragraph c of Section 12 of these Regulations, which shall continue to be subject to control unless the Administrator shall issue an order decontrolling them pursuant to Section 12 of these Regulations, provided, however, that maximum rents established under the Veterans' Emergency Housing Act, for priority constructed housing accommodations completed on or after February 1, 1947, shall continue in full force and effect, if such accommodations are being rented to veterans of World War II or their immediate families who, on June 30, 1947 either occupied such housing accommodations or had a right to occupy such accommodations at any time on or after July 1, 1947, under any agreement whether written or oral.

Section 11 is hereby amended by changing subparagraph (2) of paragraph a to read as follows:

(2) The term "self-contained family unit" shall mean a housing accommodation with private access, containing two or more rooms, consisting of at least one bed-room and a living-room dining-space area in addition to a kitchen (with cooking and refrigeration facilities and a sink), a private bathroom (with a wash basin, toilet and bathtub or enclosed shower), and at least one closet plus an additional closet for each bed-room. Such accommodation shall contain a minimum total area of 395 square feet exclusive of the area of bathrooms and closets. In lieu of a kitchen, the accommodation may include an enclosed kitchenette or an area in the living-room which is either recessed or semi-enclosed, provided that all of the above-specified kitchen facilities and equipment are within such recessed or semi-enclosed area. Where, however, the landlord establishes that either the two-room or total floor area requirement, or both, cannot be complied with because of unique or peculiar circumstances, the Administrator may waive this requirement if he finds that such waiver is not inconsistent with the purposes of the Rent Law and these Regulations and would not be likely to result in the circumvention or evasion thereof.

Section 12 is hereby added to read as follows:

Section 12. **Substantial demolition after May 1, 1962.**

a. Upon application of the landlord, the Administrator shall issue an order decontrolling all of the housing accommodations resulting from substantial demolition of a building, provided that:

(1) Not less than 50 percent of the housing accommodations after reconstruction shall consist of apartments suitable for occupancy by larger families or not less than 50 percent of the total floor area of all of the housing accommodations after reconstruction shall be utilized for apartments suitable for occupancy by larger families; and

(2) All other housing accommodations in the building shall comply with at least the minimum requirements for a self-contained family unit, as defined in Section 11 of these Regulations; and

(3) All of the housing accommodations meet all of the requirements of law and of the City agencies having jurisdiction thereof and over the occupancy of such accommodations.

b. If the building after reconstruction fails to meet the requirements of subparagraph (1) of paragraph a of this section, but if all of the housing accommodations in such building shall comply with at least the minimum requirements for a self-contained family unit as defined in Section 11 of these Regulations, and if all of the housing accommodations in such building meet all of the requirements of law and of the City agencies having jurisdiction thereof and over the occupancy of such accommodations, then only those apartments which are suitable for occupancy by larger families shall be decontrolled and all other housing accommodations in such building shall remain subject to control.

c. The term "housing accommodations resulting from substantial demolition", as used in this section shall mean any housing accommodation (1) which is created on or after May 1, 1962, as a result of the substantial demolition of a multiple dwelling and the reconstruction of such building in such manner as to retain any portion thereof existing prior to such demolition and (2) which is created after the issuance of one or more certificates permitting the eviction of any tenant or tenants of such multiple dwelling for the purpose of effecting such demolition where application for such certificates was filed after April 24, 1962.

d. The term "apartment suitable for occupancy by larger families", as used in this section, shall mean a housing accommodation with private access, containing four or more rooms, consisting of at least two bedrooms, a living-room dining-room space area and a kitchen (with cooking and refrigeration facilities and a sink), a private bathroom (with a wash basin, toilet and bathtub or enclosed shower), and at least two closets plus an additional closet for each bedroom. Such accommodation shall contain a minimum total area of 560 square feet exclusive of the area of bathrooms and closets.

e. Notwithstanding any of the foregoing provisions of this section, no order shall be issued by the Administrator decontrolling housing accommodations resulting from substantial demolition (1) in any building aided by a loan made by the City under Article 8 of the Private Housing Finance Law so long as maximum rents are required to be prescribed by the provisions of said Article 8 or (2) in any multiple dwelling with respect to which tax abatement and tax exemption under Section J41-2.5 of the Administrative Code begins after April 30, 1962, until the date on which such tax abatement or tax exemption terminates, whichever is later.

f. Housing accommodations created after May 1, 1962, as a result of the reconstruction of a multiple dwelling which has been substantially demolished where no certificates permitting the eviction of any tenant or tenants of such multiple dwelling for the purpose of effecting such demolition have been issued or where application for such certificates was filed on or before April 24, 1962, shall not require an order of the Administrator decontrolling them and shall not be subject to control pursuant to subparagraph (8) of paragraph f of Section 2 of these Regulations.

g. Housing accommodations decontrolled under this section shall remain decontrolled only so long as the housing accommodations are not occupied for other than single family occupancy.

h. Any housing accommodation decontrolled under this section shall become subject to control, if while in such decontrolled status, it is certified by a City agency having jurisdiction to be a fire hazard or in a continued dangerous condition or detrimental to life or health, and once subject to control, it shall continue to be subject to control, notwithstanding the subsequent removal of the conditions on which such certificate was based.

AMENDMENT NO. 9

The Rent, Eviction and Rehabilitation Regulations are hereby amended as follows:

Section 1 is hereby amended to read as follows:

Section 1. Statutory authority. These Regulations are adopted and promulgated pursuant to the powers granted to the City Rent and Rehabilitation Administration by the City Rent and Rehabilitation Law [Title Y of Chapter 51 of the Administrative Code of the City of New York (formerly being Chapter 41 and renumbered by Chapter 100 of the Laws of 1963) as amended by Local Law No. 67 for the year 1963 and further amended by Local Law No. 13 for the year 1964] and the Local Emergency Housing Rent Control Act (Chapter 21 of the Laws 1962). As used in these Regulations, the term "Rent Law" shall mean the City Rent and Rehabilitation Law.

Section 2 is hereby amended by adding thereto a new subparagraph to paragraph f, to be subparagraph (14), to read as follows:

(14)(a) Individual housing accommodations having unfurnished maximum rents of $250.00 or more per month as of April 1, 1960, or furnished maximum rents of $300.00 or more per month as of April 1, 1960, which are or become vacant on or after March 26, 1964; or

(b) On and after October 1, 1964 individual housing accommodations having unfurnished maximum rents of $300.00 or more per month as of April 1, 1960, or furnished maximum rents of $360.00 or more per month as of April 1, 1960; provided, however, that where such housing accommodation is occupied by a tenant whose household contains one or more children attending an elementary or secondary school, such housing accommodation shall continue to remain subject to control under the Rent Law and these Regulations until June 30, 1965; and provided, further, that where such housing accommodation is occupied on March 26, 1964 by a tenant whose household contains four or more related persons, it shall continue to remain subject to control under the Rent Law and these Regulations so long as such tenant remains in occupancy; or

(c) On and after April 1, 1965 individual housing accommodations having unfurnished maximum rents of $250.00 to $299.99, inclusive, per month as of April 1, 1960, or furnished maximum rents of $300.00 to $359.99, inclusive, per month as of April 1, 1960; provided, however, that where such housing accommodation is occupied by a tenant whose household contains one or more children attending an elementary or secondary school, such housing accommodation shall continue to remain subject to control under the Rent Law and these Regulations until June 30, 1965; and provided, further, that where such housing accommodation is occupied on March 26, 1964 by a tenant whose household contains four or more related persons, it shall continue to remain subject to control under the Rent Law and these Regulations so long as such tenant remains in occupancy.

(d) The exemptions provided for in this subparagraph (14) shall remain effective only so long as the housing accommodations are not occupied for other than single family occupancy.

(e) The term "related persons", as used in this subparagraph (14), shall be limited to the tenant and a parent, grandparent, child, step-child, grandchild, brother or sister of the tenant or of the tenant's spouse or the spouse of any of the foregoing, who customarily occupied the housing accommodation on and before March 26, 1964. An unmarried child or grandchild of the tenant or the tenant's spouse who temporarily resided elsewhere on such date because of attendance at an educational institution or service in the armed forces of the United States shall be deemed to be a related person in occupancy.

Section 42 is hereby amended by adding a new paragraph, to be paragraph c, to read as follows:

c. The landlord of a housing accommodation specified in Section 2 f (14) of these Regulations shall (1) file a report of the eligibility of a housing accommodation for decontrol under such section no later than April 30, 1964, (2) file a report of decontrol within 30 days after decontrol, and (3) file an additional report within 30 days after the anniversary date of decontrol, showing changes in the rental of, and the essential services, furniture, furnishings and equipment provided for such accommodation. Such reports are to be filed upon forms prescribed by the Administrator.

STATEMENT OF CONSIDERATIONS FOR THE ISSUANCE OF AMENDMENT NO. 9 TO THE RENT, EVICTION AND REHABILITATION REGULATIONS

Section 1 was amended in order to revise the statutory reference to include Local Law No. 13 for the year 1964.

Section 2 f (14) was added to the Regulations in order to give regulatory effect to Section Y51-3.0 e 2 (i) (7) of the Rent Law enacted in Local No. 13 for the year 1964.

Section 42 c was added to the Regulations in order to make provision for the filing of a report of eligibility for decontrol and a decontrol report for the housing accommodations affected by these decontrol provisions of the Rent Law. A report of eligibility for decontrol must be filed no later than April 30, 1964. The report will set forth the grounds upon which the landlord contends an apartment is eligible for decontrol. This will alert the tenant to the fact that a landlord claims his apartment is eligible for decontrol and will permit the resolution of any controverted facts.

The decontrol report must be filed within 30 days after decontrol and the additional report is required to be filed one year after decontrol.

THE CITY OF NEW YORK
CITY RENT AND REHABILITATION ADMINISTRATION
280 Broadway
New York 7, New York

Operational Bulletin No. C-15 — *Rental Values; Combination Kitchen Units (refrigerator, sink and gas range)*
Supplement No. 4
(Issued June 9, 1964)

The rental values for combination kitchen units for (a) apartments consisting of 2 1/2 rooms or less and (b) apartments consisting of 3 rooms with a kitchen having less than 70 square foot area and no separate dining area shall be as indicated in this bulletin. Heretofore, rent adjustments pursuant to §33.1 of the Regulations were granted on a prior opinion basis. With the issuance of this bulletin it will not be necessary for a landlord to file an application for a prior opinion. The rental values indicated herein shall be applied to all pending applications where the installation was made subsequent to January, 1962.

The application for the rent increase must include the written consent of the tenant and be accompanied by the following documents:

(a) An affidavit in duplicate, made by the landlord, stating that the apartment consists of 2 1/2 rooms or less or that the apartment consists of 3 rooms with a kitchen having less than 70 sq. ft. area and that the apartment does not have a separate dining area; that the unit has a one-piece body and a one-piece top of either porcelain or stainless steel; and that over-head cabinets, if included, are joined to body by matching wall splasher.

(b) A detailed bill from seller which states make, model, cost, over-all width of unit, and exact description of component parts of combination unit.

(c) Proof from the Department of Buildings that the installation complies with the Multiple Dwelling Code and regulations where the combination unit includes a cooking component or sink which did not replace an existing cooking component or sink.

The rental values for combination kitchen units are as follows:

RENTAL VALUES
FOR SINGLE UNIT KITCHEN COMBINATION
(refrigerator, sink and gas range)

Components of Combination Unit	Rental Value [1]
STOVE	
Complete Range with Oven	$2.00
2-Burner Cooking Plate	.75
3 or 4 Burner Cooking Plate	1.00
REFRIGERATOR	
8.9 Cubic Feet and Under, Net Capacity (NEMA)	$3.25
SINK [2]	
Without Undersink Cabinet	$2.00
With Undersink Cabinet	3.00
OVERHEAD CABINETS [3]	
With Connecting Wall (Back) Splasher	
34″ to 59.9″	$1.00
60″ to 72.9″	1.25

ALLOWANCE FOR OVER-ALL WIDTH OF UNIT [4]	Rental Value 3-Unit Combination *(Range with Oven)*	All other Units *(2 or 3 Components)*
24″ to 34.9″	None	None
35″ to 46.9″	$1.00	$ .25
47″ to 59.9″	1.50	.50
60″ to 72.9″	2.00	1.00

[1] Replacement and "none before" adjustments for individual components will have the same rental value. Where a previous order had been issued, either by the Federal authorities or the State Rent Commission, prior to July 1, 1954 for a mechanical refrigerator, or a range or cooking stove, a subsequent replacement shall have the full rental value indicated above. Where the prior order was issued on or after July 1, 1954, a subsequent replacement shall have a rental value of the difference between the amount of the previous adjustment and the rental value for the new replacement. In approved "none before" installations cost of gas supply line, water supply and drainage lines, where necessary may be amortized over customary period of years for capital improvement.

[2] Also where there has been a previous order for a kitchen sink no further allowance may be granted unless present replacement has an undersink cabinet which was not included in previous order. In this event, the replacement shall have a rental value of the difference between the amount of the previous adjustment and the rental value for the new replacement not to exceed $1.00.

[3] Adjustment is allowed only for overhead cabinets which are joined as an integrated part of unit by means of back splasher, and are the same overall width as body of unit. There are at present no overhead cabinets with wall splashers made in the 24″ to 34.9″ category.

[4] "Allowance for overall width of unit" has been added to compensate for variations in cost of unit.

Application of Suggested Rental Values For New Combination Kitchen Units

Components of Combination Units	Rent History	Suggested Monthly Allowance
EXAMPLE I		
2 Burner Plate	Included in freeze date	$ .75
Refrig. 7.5 cu. ft.	Included in freeze date	3.25
Sink w/o cabinet	Included in freeze date	2.00
Overall Width 27″		None
	Total	$ 6.00
EXAMPLE II		
4 Burner Plate	None before	$ 1.00
Refrig. 8.5 cu. ft.	Included in freeze date	3.25
Sink w/cabinet	Replaced w/o cabinet $2.00 1949	1.00
Overhead cabinet with wall splasher		1.25
Overall Width 72″		1.00
	Total	$ 7.50
EXAMPLE III		
Range w/oven	Replaced 8/8/54	$—
Refrig. 7.5 cu. ft.	Replaced 8/8/54, 6.0 cu. ft.	.25
Sink w/cabinet	Included in freeze date	3.00
Overall Width 48″		1.50
	Total	$ 4.75

Components of Combination Units	Rent History	Suggested Monthly Allowance
EXAMPLE IV		
Range w/oven	Replaced 3/10/50	$ 2.00
Refrig. 8.5 cu. ft.	Replaced 3/10/50, 7.5 cu. ft.	3.25
Sink w/o cabinet	Included in freeze date	2.00
Overall Width 48"		1.50
	Total	$ 8.75
EXAMPLE V		
Range w/oven	Replaced 2/20/49	$ 2.00
Refrig. 7.5 cu. ft.	Replaced 2/20/49, 7.0 cu. ft.	3.25
Sink w/cabinet	Included in freeze date	3.00
Overall Width 72"		2.00
	Total	$10.25

HORTENSE W. GABEL
Administrator

THE CITY OF NEW YORK

CITY RENT and REHABILITATION ADMINISTRATION

ROBERT F. WAGNER
MAYOR

HORTENSE W. GABEL
ADMINISTRATOR

INFORMATION SHEET No. 1

(Issued December 1, 1963)

VOLUNTARY LEASE AGREEMENTS—SECTION 33.2 OF THE REGULATIONS

Under Section 33.2 of the Rent, Eviction and Rehabilitation Regulations landlords and tenants are permitted to enter into voluntary leases which may provide for an increase in rent not in excess of 15% above the maximum rent in effect for a controlled housing accommodation where the conditions specified in Section 33.2 of the Regulations are met.

The tenant, by executing such a lease, secures himself against having to pay more than the amount agreed upon during the term of the lease. Similarly, by executing such a lease, the landlord commits himself to charging no more than the amount agreed upon during the term of the lease.

As a condition for the increase in the maximum rent, the landlord *must* certify "that he is maintaining all essential services furnished or required to be furnished", including any additional services which the tenant may secure in his bargaining for the lease, "and will continue to maintain such services so long as the increase in maximum rent continues in effect."

The maximum rent is automatically increased by the execution of such a voluntary lease. However, the Regulations require the landlord to file a Lease Report (Report Form R-33.2) within 30 days of its execution by the tenant. A tenant who signs a voluntary lease, in addition to the protection afforded by the lease, will continue to have any protection offered by the Rent Law and the Regulations.

The following questions and answers will clarify many of the problems presented to the Rent and Rehabilitation Administration concerning voluntary lease agreements.

1. Q. A landlord requests a tenant in occupancy to enter into a two year lease providing for an increase of not more than 15% in the maximum rent. Must the tenant sign such a lease?

A. No. The tenant need not sign a lease providing for a rent increase unless he wishes to. The maximum rent cannot be increased merely because the tenant does not sign a lease. Nor may the tenant be evicted on the basis of his refusal to sign a lease providing for an increase in rent.

2. Q. Upon what grounds may a landlord obtain an increase in the maximum rent if the tenant does not have the protection of a lease?

A. In the absence of a lease the landlord may under the Regulations obtain a rent increase on application to the District Director with the tenant's consent for increased services or facilities and without the tenant's consent where he makes a major capital improvement or a substantial rehabilitation of the premises. The Regulations also provide for rent increases based upon increased occupancy or subletting of the tenant's apartment, for financial adjustment of the rents on the basis of a 6% fair return on the valuation of the property, and for increased costs of operation of buildings containing no more than four residential units.

3. Q. If a tenant declines to accept the landlord's terms for a lease, or does not enter into any lease, may the landlord decrease the essential services which he gave, or which he was required to give, for the maximum rent?

A. No. Should the landlord for any reason refuse to provide such services, the tenant may file a complaint with the District Rent Director. Where the landlord refuses to restore the services, the maximum rent may be reduced.

4. Q. I signed a two year lease which just expired. Can my landlord evict me?

A. Tenants who continue to remain in possession after the expiration of a voluntary lease agreement are statutory tenants and are entitled under the Regulations to the same protection against eviction as any tenant who had not signed a statutory lease.

5. Q. A landlord proposes to include a so-called "escalator clause" in the lease to provide for an additional increase in rent during the term of the lease in the event that such increase is permitted by new rent regulations, or in the event that rent control terminates. Is such a clause proper under the Rent, Eviction and Rehabilitation Regulations?

A. No. A lease containing such a clause does not ordinarily comply with the requirements of Section 33.2 of the Regulations.

6. Q. If a landlord enters into a voluntary lease agreement while an application for a rent increase is pending on the basis of the rewiring of the electrical system in the building, will the lease rent be increased during the term of the lease if the application is granted?

A. No, unless the lease contains a provision that the maximum rent resulting from the execution of the lease may be further increased by order of the Administrator based upon a major capital improvement or substantial rehabilitation of the building or the housing accommodations therein which was either completed or in progress at the time of the execution of the lease. The lease may in such cases provide that the additional amount as determined by the Administrator may then become payable during the term of the lease agreement.

7. Q. If a landlord enters into such a lease while a fair return application for rent increases (§33.5 application) is pending, will the lease rent be increased during the term of the lease if the application is granted?

A. No, however where a lease is executed on or after January 1, 1963, the lease may state that at the time of its execution the tenant was advised by the landlord that an application, described by docket number or date of filing the application with the District Rent Office, is pending before the District Rent Director for an increase of the maximum rent in effect immediately prior to the execution of such voluntary lease agreement pursuant to Section 33.5 of the Regulations, and that the tenant consents to an increase in the maximum rent over the rent fixed by the lease, to be effective upon the expiration date of the lease and in an amount equal to the rent increase granted on said application. In the absence of a provision in leases executed after January 1, 1963, any rent increase granted in the "fair return" proceeding becomes merged in the lease rent and does not increase such rent even after the expiration of the lease term.

8. Q. What does a tenant gain by signing such a voluntary lease agreement?

A. By signing a voluntary lease agreement, the tenant obtains the contractual right to remain in the leased premises, subject to the conditions in the lease, at the rent agreed upon in the lease for the duration of its term. Also, if the landlord becomes eligible for a greater increase in rent during the term of the lease through some adjustment section of the Regulations, he will not be able to compel the tenant to pay the increase during the lease term without the tenant's written consent unless the lease is executed under the circumstances described in Question No. 6.

9. Q. The tenant is agreeable to having a lease, but prefers a three-year lease instead of a two-year lease. Would this be proper under the Regulations?

A. Yes. The lease may be for as long a period as the landlord and tenant may agree upon, provided it is at least for a two-year period. However, the Regulations provide that if the lease is with a new tenant and is for longer than a two-year term, the new tenant must be given the right to cancel the lease at any time after the expiration of the first two years of the lease by giving the landlord at least 30 days' notice in writing by registered or certified mail of his intention to cancel the lease and surrender possession of the apartment. If the tenant elects to cancel his lease in such case, he must vacate the apartment.

10. Q. The tenant would like to have the right to cancel the lease upon 30 days' notice to the landlord at any time prior to the expiration of the lease. Is this permissible?

A. Yes. The lease may give the tenant the right to cancel or terminate the lease at any time.

11. Q. The tenant wishes to pay a 10% increase and the landlord is willing to accept this. Is this permissible?

A. Yes. The rent increase may be in any amount not exceeding 15%.

12. Q. The tenant is willing to sign a lease but he wishes a new stove, or a new refrigerator, or the right to put up a television antenna, or some other increase or improvement in the services as a consideration for the execution of the lease. May this be part of the lease agreement?

A. Yes. This is a matter of bargaining between landlord and tenant. It is important to remember that the lease should specifically include a statement of such additional services and state that they are included in the lease rent and are being provided by the landlord on the effective date of the lease term. The lease may also provide that the tenant consents to an increase in rent for such increase in service in addition to the permissible 15% statutory lease increase. (See answer to Question No. 16.)

13. Q. If a tenant signs a lease which provides for additional services or equipment, and the landlord fails to furnish such additional services or equipment, what may the tenant do?

A. He may file a complaint with the District Rent Director and the new maximum rent may be reduced.

14. Q. Will the housing accommodations be decontrolled if the tenant signs such a lease?

A. No. The tenant continues to receive the protection of the Rent Law and of the Regulations as well as the benefits of the lease.

15. Q. A tenant is not agreeable to entering into a voluntary lease agreement, but he does want a new refrigerator, or a new stove, or a new service. How may he obtain it?

A. The tenant and the landlord must come to an agreement about the additional service. Application Form A-33.1C is provided on which the landlord can apply for an increase based upon this agreement. The amount of the increase of the maximum rent for the additional service will be determined by the District Rent Director in accordance with the rental value prescribed by the Administrator.

16. Q. Is it possible for a landlord to obtain an increase in the maximum rent for an increase in services, etc. in addition to the permissible 15% statutory lease increase?

A. Yes. It is permissible for a statutory lease to provide for a further rent increase where the tenant has consented to the increase in services, etc. and the Administrator has issued an order increasing the maximum rent on the basis of such increase in services, etc. Where the consent to the increase in services, etc., is a part of the same agreement which provided for the statutory lease increase, it would be proper for the landlord to file a combination form [Application Form A-33.1CL] which reports the lease increase and makes application for a further rent adjustment based upon the increased services, etc.

17. Q. If the landlord and tenant sign such a voluntary lease agreement, what remains to be done for it to become effective?

A. The new maximum rent takes effect automatically in accordance with the terms of the lease if the lease complies with the requirements of Section 33.2 of the Regulations. Within thirty days after the date of delivery of the lease to the landlord by the tenant, the landlord must file a Lease Report (Report Form R-33.2) of it upon prescribed forms with the District Rent Director. This must include a statement of any additional services or equipment furnished to the tenant as a consideration for the execution of the lease.

18. Q. When may the landlord and the tenant enter into a voluntary lease agreement?

A. The landlord and tenant may enter into and execute a voluntary lease at any time. However, Section 33.2 provides that where a voluntary lease has not expired a subsequent lease may be entered into provided that at least twelve months of the prior lease had already expired. The new voluntary lease must be for a period including the unexpired portion of the first two years of the prior lease plus at least two years. Where the prior lease provided for a full 15% increase, the new lease may not provide for a further rent increase before the expiration of the original two years of the earlier lease.

For instance, if a housing unit had a maximum rent of $100 per month and it was increased by a voluntary lease to $115 per month with a term which began on January 15, 1962 and was to terminate on January 14, 1964, no new statutory lease could be obtained prior to January 15, 1963. On or after January 15, 1963 a landlord could enter into a new lease for a term expiring no sooner than January 14, 1966 with the rent remaining at $115 per month until January 14, 1964, and the further 15% increase, or whatever lesser amount the tenant agreed to pay, would become effective on January 15, 1964. If the prior lease did not provide for a full 15% increase, but only for a 10% increase, and increased the maximum rent from $100 per month to $110 per month, the landlord and tenant can enter into a new voluntary lease which would increase the maximum rent, effective upon the execution of the new lease, to $115 per month until January 14, 1964 and then provide for an additional increase of not more than 15% above the $110 maximum rent for the two years commencing January 15, 1964. If the prior lease did not provide for a full 15% increase, but only a 10% increase, and increased the maximum rent from $100 per month to $110 per month, the only voluntary lease that the landlord and tenant could enter into before the expiration of the first year of the original lease (January 14, 1963) would be one which would increase the maximum rent from $110 per month to $115 per month and which would provide for a minimum term of two years.

19. Q. May a lease validly provide that during the first year the maximum rent is increased by 10% and during the second year by an additional 5% over the original maximum rent?

A. Yes. Such a clause is valid under the Regulations since it does not require the payment of more than 15% over the former maximum rent at any time during the term of the lease.

THE CITY OF NEW YORK

CITY RENT and REHABILITATION ADMINISTRATION

ROBERT F. WAGNER
MAYOR

HORTENSE W. GABEL
ADMINISTRATOR

INFORMATION SHEET NO. 2

(Issued December 1, 1963)

PAINTING AND DECORATING COMPLAINTS

Painting and decorating service where required to be supplied by your landlord is considered to be an essential service included in the maximum rent for your apartment. Generally, this means that your landlord must under the Rent Law paint your apartment at two-year intervals, or at three-year intervals if it was his practice to paint every third year. However, if your landlord never supplied this service, the Rent Law does not require him to do so now.

If your landlord does not meet his obligation to paint, you may file an application with the District Rent Office for a rent reduction under the provisions of Section 34.2 of the Rent, Eviction and Rehabilitation Regulations upon the expiration of the two- or three-year interval, whichever applies, since the last painting. Application Form A-34.2P (Tenant's Application for a Decrease in Rent Based on Failure to Paint) should be filed in duplicate at the District Rent Office servicing your neighborhood. However, it is advisable for you to remind your landlord that painting is due before filing a complaint with your District Rent Office.

The purpose of this Information Sheet is to answer a variety of questions concerning painting and decorating service which are frequently asked. If your particular problem is not covered, it is suggested that you write or call at your District Rent Office.

Questions and Answers

1. Q. Has the tenant the same right to painting service that he had under the State Law?

A. Yes. Your landlord must continue to provide the same painting and decorating service as he was required to provide on April 30, 1962. This will not require your landlord to paint any more frequently than was the custom in the period immediately prior to March 1, 1943, the Federal maximum rent date, nor will your landlord in any case be required to paint more frequently than at two year intervals. While there is a presumption of a two year painting practice, your landlord may submit evidence of his actual painting practice.

2. Q. My apartment hasn't been painted in over two years. Am I entitled to have my apartment painted?

A. Yes, unless your landlord can establish a practice of painting at greater intervals.

3. Q. The two year painting practice applies to my apartment. When I moved into my apartment in May, 1956, it was painted by my landlord. In May, 1958 I asked him to paint. He did so in August, 1958. In 1960 he did not paint until September and in 1962 he did not paint until December. When is my next painting due?

A. It will become due in December 1964. The two year period commences from the time that your landlord last painted your apartment.

4. Q. My apartment was painted every three years prior to April 30, 1962. Only two years have elapsed since the last painting. Can I now demand that my landlord paint my apartment?

A. On April 30, 1962 there was a three year painting practice. Accordingly, your landlord may continue painting at three year intervals without being in violation of the Rent, Eviction and Rehabilitation Regulations.

5. Q. Prior to April 30, 1962 my landlord had a practice of painting the entire apartment every two years and the kitchen and the bathroom every year. My apartment was last completely painted and decorated 1½ years ago. Can I make my landlord paint the kitchen and the bathroom now?

A. No. The painting of the kitchen and bathroom alone cannot be compelled. It must be done as a part of the entire painting of the apartment which is due at the end of two years.

6. Q. My landlord has always painted one or two rooms at a time. Can I now make him paint the entire apartment at one time?

A. No. In this particular case, the obligation of the landlord is to continue the same painting service that was provided on and prior to April 30, 1962. However, the two year presumption then applies to each room.

7. Q. What steps must a tenant take in order to get his apartment painted?

A. Ask your landlord to paint your apartment. If you claim that closets are in need of painting or that floors need cleaning and shellacking you should call that fact to your landlord's attention when you ask him to paint. If he fails to do so, you may obtain two copies of Application Form A-34.2P from your District Rent Office. These forms may be obtained by requesting them through the mail. After carefully reading the instructions, complete each copy of the form making certain to answer all questions. If the tenant also has a complaint about a reduction in related services such as window shades or venetian blinds, he should clearly set forth that fact in his application. These services are only required to be furnished when needed and not at any regular interval. Unless specific complaint is made concerning these service decreases, no consideration will be given to such service decreases until painting and decorating again become due because these services are deemed to be a part of your landlord's decorating obligation. File two copies of the Application Form with your District Rent Office.

8. Q. What happens after that?

A. The District Rent Office will forward a copy of your application to your landlord, together with a notice that the maximum rent may be reduced because of your landlord's alleged failure to comply with his obligation to paint and decorate. Should your landlord not dispute that painting is due he will be given one month to paint and decorate your apartment and file proof of the completion of the work. If he does not restore this service within one month, an order reducing the maximum rent will be issued. However, if your landlord disputes the obligation to paint and decorate he is required to reply within seven days of the mailing of the tenant's application and submit evidence to support his contention. Should the District Rent Office, after a study of the record, determine that your landlord has an obligation to paint and decorate and that he has failed to comply with this obligation, a notice will be sent to both you and your landlord stating that unless your landlord restores the service within seven days of the date of the notice, and submits written proof thereof with the District Rent Office within that period, an order reducing the maximum rent will be issued by the District Director. This proof may be in the form of an affidavit of the painter or the tenants' written admission that the apartment was properly painted.

9. Q. My landlord had a practice of painting a particular apartment every two years. He painted the apartment three years ago. I moved into this apartment a year ago and at that time paid for my own painting. I now claim that the two year interval had run when I moved in and that my landlord is now obligated to paint and decorate. My landlord advised me that since my apartment was painted only a year ago he will not paint for another year. May I file an application for a rent reduction based upon my landlord's failure to paint?

A. Yes In computing the time period, the date when your landlord last painted the apartment determines whether or not he is in default of his obligation of maintaining the painting and decorating service.

10. Q. I rented a vacant apartment last month and upon my landlord's refusal to paint and decorate the apartment, I painted it at my expense. Can I get my rent reduced?

A. If less than one year has expired since the tenant rented the apartment, he can file an application on Application Form A-34.2P for a rent reduction pursuant to Section 34.2 of the Regulations. If the landlord claims that at the time of the renting the painting was not due, the landlord will be required to produce his books and records. Should the landlord fail to establish that the painting was not due at that time, the landlord will be given an opportunity to promptly refund to the tenant the actual cost of the painting and decorating provided that the cost is reasonable. Where the tenant has provided himself with decorating which is not usually supplied by landlords, the landlord will be given an opportunity of establishing his usual cost for supplying such service and his obligation to refund will be limited to that amount. If the landlord refuses to make the refund, it will be determined that there has been a reduction in painting and decorating service and an appropriate rent reduction will be ordered. Where the refund is made to the tenant, the interval governing landlord's obligation to paint runs from the date when the tenant painted. However, in cases where the tenant painted when renting, the landlord will not be given an opportunity to paint in lieu of a rent reduction. In such cases the landlord can satisfy his obligation to paint and decorate only by making a proper refund to the tenant.

11. Q. I have been living in my apartment for over six years. My apartment was painted at two-year intervals by my landlord. The last painting was due at the beginning of my seventh year of occupancy. I requested my landlord to paint at that time. Upon his refusal to paint, I painted the apartment myself. Can I now file an application for a rent reduction?

A. Yes. The District Rent Office will give your landlord an opportunity of establishing his usual cost for supplying such service and permit him to reimburse you by that amount. If your landlord refuses to make the refund, it will be determined that there has been a reduction in painting and decorating service and your rent will be reduced.

12. Q. My landlord last painted my apartment two years ago. He now refuses to paint, however, I don't want a rent reduction, I want my apartment painted.

A. The District Rent and Rehabilitation Diretctor will notify the landlord of his obligation to paint and that if he fails to do so an order will be issued reducing the rent. After the rent reduction order is issued, you can make your

own arrangements to have your apartment painted, since the reduced rent reflects the elimination of the landlord's obligation to continue painting your apartment. Since your landlord has 33 days for filing a protest against an order reducing the maximum rent, it is suggested that you wait until this period expires before making arrangements for doing the job at your own expense. After you have painted your landlord cannot obtain a restoration of the rent reduction without refunding to you an amount equal to his usual cost for painting. If after the rent reduction is ordered, your landlord agrees to paint before you arrange for your own painting, he may paint. If, however, you have expended money on painting, your landlord will be required to make such refund.

13. Q. Do I have to remove my furniture from the walls and place it in the middle of each room to be painted?

A. While you do not have to remove heavy pieces of furniture, such as a piano or a very heavy combination radio-phonograph, your landlord's request that you place other pieces of furniture in the middle of the room is a reasonable one which you must comply with. It then becomes the obligation of your landlord to properly cover and protect your furniture while he is having the apartment painted.

14. Q. I have wall to wall carpeting. My landlord insists that I must lift my carpeting and roll it to the center of the room, or otherwise remove it.

A. You are not obligated to do this.

15. Q. Some of the rooms in my apartment have wallpaper. My landlord does not want to give me new wallpaper but is willing to paint those rooms instead. Must he give me wallpaper?

A. No. Your landlord has the option of either giving you new wallpaper or painting those rooms.

16. Q. My landlord insists that I must remove the wallpaper, and also that I must then prepare the surface of the walls for painting by "sizing" the walls. Must I do this?

A. That depends upon the facts. Where the landlord previously either hung the wallpaper or paid for the wallpaper, it is his obligation to both remove the wallpaper and "size" the walls if he now wishes to paint.

17. Q. My landlord is willing to paint my apartment; but, insists that all of the woodwork and walls shall be painted a buff color since he wants uniformity of colors in his building. My apartment was last painted by my landlord with a variety of colors and the colors used in each room blends in with the decorative scheme for each of the rooms. For that reason, I have refused to permit my landlord to paint my apartment. I have requested him to repaint with the existing colors. Do I have to permit my landlord to change the color scheme of the rooms in my apartment?

A. No. The landlord must repaint with the existing color scheme unless he obtains the consent of the tenant.

18. Q. My landlord insists that I sign a paper or a release, agreeing to free both him and his painters from any damage done to my furniture which may occur as a result of the painting of my apartment. Do I have to sign such a paper?

A. No. You are under no obligation to sign such a paper. Should your landlord refuse to proceed with the painting and decorating unless a release is executed, the District Rent Director will consider there has been a failure to provide the customary painting and decorating service.

19. Q. Must a tenant permit his landlord to provide painting and decorating service on week-ends, holidays or after 5:00 P.M.?

A. This service should be provided by your landlord during normal working hours during the day and not on week-ends or holidays. However, it would be permissible for you and your landlord to arrange for the performance of these services at any time that is otherwise agreeable to you.

20. Q. Prior to April 30, 1962 my landlord had the practice of supplying me with paint every two years and I did the painting and decorating. I have now asked my landlord to furnish me with paint since it is over two years since I had last painted my apartment. If my landlord continues to refuse to supply me with paint, may I apply for a rent reduction?

A. Yes. Where your landlord had the practice of supplying you with paint in lieu of painting, his refusal to supply paint in accordance with this custom will be deemed to be a reduction of painting and decorating service.

21. Q. My landlord has just painted and decorated my apartment. However, the job is substandard and was done in an unworkmanlike manner. If my landlord refuses to redo the painting, may I apply for a rent reduction?

A. Yes. In order for your landlord to meet his obligation to supply painting and decorating service, the service must be performed in a workmanlike manner.

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Operational Bulletin No. C-7 - Completion of Application Form A-33.1 RE
Supplement No. 1
(Issued December 1, 1964)

Application Form A-33.1 RE has been designed for use in connection with applications for rent increases based upon the rewiring of the electrical wiring system of a building in accordance with the provisions of Administrator's Interpretation No. 1. Since the increases allowed are determined on the basis of a fixed rental value schedule, the cost of the work and whether such cost was financed are not matters which must be disclosed to the tenants. Accordingly, items 3 and 4 of the "Statement of Landlord" need not be completed on the copies of the application which are to be mailed to the tenants. However, the original master application and one copy of such master application must be completed in all respects before the application will be acceptable for docketing.

HORTENSE W. GABEL
Administrator

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Operational Bulletin No. C-14 - Elevator Modernization; rental values; procedures
(Revised December 1, 1964)

The Administrator has completed a study relating to the modernization of elevators and has tentatively formulated the policies and procedures hereinafter set forth. The matters contained herein shall apply to all cases where such work has been started on or after January 1, 1963.

The Administrator has determined that the following elevator rehabilitation only will be considered a major capital improvement within the meaning of Section 33.1 c of the Regulations for which rent increases may be granted.

I. Complete Elevator Modernization.

A complete elevator modernization must include the installation of a complete new controller-selector, a new cab and all new hoistway doors.

The rental value for such modernization will be based upon the recoupment of the actual cost thereof over a period of 10 years, except that the maximum monthly rental increase per apartment shall not exceed

$2.50 in buildings containing 40 - 59 apartments
$2.00 in buildings containing 60 or more apartments.

II. Partial Elevator Modernization.

A partial elevator modernization must include the installation of a complete new controller-selector and refinishing the cab with a multiple spray enamel and lacquer coating, or its equivalent. A partial modernization may include additional work providing that the foregoing minimum standards have been complied with.

The rental value for such modernization will be based upon the recoupment of the actual cost thereof over a period of 10 years, except that the maximum monthly rental increase per apartment shall not exceed

$.80 in buildings containing 40 - 59 apartments
$.55 in buildings containing 60 or more apartments.

III. Replacement of Open Grille Elevator Car Gates.

The following schedule of rent increases will be allowed, except where it is part of a complete or partial elevator modernization, for replacement of open grille elevator cab gates with new one- or two-speed solid panel doors including new door operator, securing floating platform where one exists, installing all necessary wiring, refinishing the cab, (multiple spray enamel and lacquer coating, or its equivalent).

Number of Units in Structure	Monthly Increase Per Unit
25 units or fewer	$.50
26-40 units	.40
41-64 units	.25
65 units or more	.15

IV. Procedures.

The landlord must file Application Form A-33.1EM - Landlord's Application for Increase of Maximum Rent - Major Capital Improvement - Elevator Modernization. The landlord is also required to submit the following information and documents:

1. Copy of contract for elevator modernization.
2. Cancelled checks and other evidence of expenditure for elevator modernization.
3. Photostat of approved permit from Building Department to alter elevator (Form 21) or elevator alteration specification sheet and approved permits (Forms 12 and 20).
4. Building Department Final Certificate of Compliance (Form 73).
5. Previous and present elevator maintenance contract history.
6. "Elevator Contractor's Statement of Modernization" [Report Form R-33.1(c)EM] (a detailed questionnaire describing the modernization and containing a check list of new parts and components included with the installation and the extent of repairs and replacements made with used parts or equipment).
7. Certificate of "No Violations" from the Central Violations Bureau of the Department of Buildings.

V. Miscellaneous.

1. Buildings with fewer than 40 units will be handled on a prior opinion basis.

2. Where structure has more than one elevator, the average number of apartments served per elevator will determine the appropriate maximum grants.

3. The above applies to buildings with 6 or 7 stops (6 stories and basement). Rent adjustments in buildings with more than 7 stops per elevator or with unique and peculiar circumstances will be handled by prior opinion.

4. Ten-year period of amortization does not apply to elevator modernization installed as part of an over-all building-wide rehabilitation program.

5. Where landlord makes application for a prior opinion he is required to submit three estimates covering the work which he proposes to do.

6. The total rent adjustment for elevator modernization shall be allocated equally among all units including ground and first floor apartments.

7. The amortized cost used as a basis for rent adjustment may not exceed the amount claimed in the Building Department Permit Application.

HORTENSE W. GABEL
Administrator

THE CITY OF NEW YORK

CITY RENT and REHABILITATION ADMINISTRATION

ROBERT F. WAGNER
MAYOR

HORTENSE W. GABEL
ADMINISTRATOR

INSTRUCTION SHEET No. 1

[To be used for the preparation and filing of green OPTIONAL APPLICATION FORM A-33.5S]

LANDLORD'S APPLICATION FOR INCREASE OF MAXIMUM RENT (FAIR RETURN)

(Section 33.5 of the Regulations)

The information set forth in this instruction sheet should be carefully read and followed. Before filing any application pursuant to Section 33.5, special note should be taken of the following:

a—No application may be filed unless

(1) A Certificate of the Department of Buildings is annexed to the application stating that no violations against such property are recorded in the Index maintained by the Central Violations Bureau of such Department; and

(2) More than two years have elapsed since the date of filing a previous "Fair Return" application which resulted in an order granting a rent increase.

b—If the property was acquired since March 15, 1958, the purchase price may be claimed as your "Valuation Basis." However, where such purchase price is greater than the current assessed valuation, it will only be considered for use as the valuation basis if more than two years have elapsed between the date of the sale and the date of filing your application.

Green OPTIONAL APPLICATION FORM A-33.5S is to be used by owners of buildings containing twelve or less residential units, who desire to accept a standard allowance of 13% of the Annual Rental Income (Item 8) as representing the combined annual total cost for Repairs and Maintenance and Replacements and Improvements Expenses (Items 17 and 18) of the property. The acceptance of such allowance will eliminate the necessity for the preparation of any schedules detailing these expenses or the presentation of any bills and cancelled checks proving such costs.

Where a substantial portion of the Annual Rental Income (Item 8) is derived from commercial tenants, the Administrator reserves the right to review the acceptability of the 13% allowance claimed.

INSTRUCTIONS FOR PREPARATION OF OPTIONAL APPLICATION FORM A-33.5S

The following instructions will explain how to properly complete Items 1 through 6.

Schedules required to support "Test Year" Income and Expense, Items 7 through 26, should be prepared in accordance with those instructions found on Application Form A-33.5S, and the Specific Instructions detailed below for Item 13 (Janitorial Allowance), Item 20 (Depreciation Allowance), Items 23 and 24 (Valuation Basis), and Item 25 (Net Annual Return).

Name and mailing address of landlord — Item 1

Enter name of landlord and that of his representative, if any. Address and telephone number of landlord or his representative should also be shown.

Name and mailing address of tenant — Item 2

On the original and duplicate, this item is to be left blank. See **Filing Instructions**—for the manner in which those copies to be served upon individual tenants are to be completed.

Address of property — Item 3

Enter the address of the property for which the application is being filed.

Building Data — Item 4

Enter separately the number of dwelling units (including those units occupied by landlord or superintendent, or occupied rent-free), the number of stores, units for professional or business use, garages and the total of all units. Also, enter the total number of rooms, exclusive of bathrooms.

Acquisition Data — Item 5a

Enter the date the property was acquired by the present owner and the cost. Also indicate the manner of acquisition by checking either "Purchase" or "Otherwise." If the latter, attach explanation.

Type of fuel used — Item 5b

State the type of fuel currently in use for supplying heat and/or hot water and also the full storage capacity of the fuel tank or bin.

Assessment Data — Item 6

(a) Enter the total assessed valuation in effect at the time of filing application and the specific amounts for "Land" and "Building" in the appropriate spaces. The breakdown of such total into "Land" and "Building" can be obtained from the office of the Tax Commission of the Borough in which the property is located.

(b) and (c) This information should be copied from the tax bill.

(d) Proceedings are considered to be "pending" for any of the three indicated tax years, where a protest of the assessed valuation has been filed with the Tax Commission and the time for filing writs or appeals

has not expired; or where writ(s) of certiorari have been filed with no final disposition in such actions yet determined.

(e) Where reductions were secured in any of the two indicated tax years, this information should be taken from notice of final settlement with the Tax Commission or any court order directing same. (Attach copies of such notices).

Prior Rent Increases—Item 6a

It is important that the information with regard to prior rent increases be accurately stated.

SPECIFIC INSTRUCTIONS

Janitorial Allowance — Item 13

Any landlord who personally performs the janitorial services (such as cleaning halls, attending to heating system, cleaning of walks, etc.) may claim an allowance for such services computed at the rate of $5.00 per month for each residential unit including any apartment occupied by the owner. Claim of such allowance must be accompanied by a written statement from the owner, describing the janitorial services he performs.

Where the janitorial functions are performed by an employee, the amount of salaries and wages and related payroll costs paid to such employee for the "test year" plus the rental allowance for any apartment occupied by the employee, should be entered under this item. The schedule of this expense (designate as Schedule E), should show the following:

EMPLOYEE'S NAME	REGULAR OR PART-TIME	WAGE RATE (Monthly or Weekly)	AMOUNT PAID FOR TEST YEAR
			$

The following evidence must be submitted to substantiate the claimed expense of salaries and related costs paid to an employee for the "test year":

(a) Cancelled checks in payment of wages, or if payments were made in cash, present an affidavit signed by the employee specifying his wage rate, the amount of cash and any rental or other allowances received by him.

(b) Copies of quarterly Social Security Tax Returns.

(c) Copies of quarterly State Unemployment Insurance Tax Returns.

(d) Current Workmen's Compensation Insurance policy.

(e) Current Disability Benefits Insurance policy.

Depreciation Allowance — Item 20

The allowance to be claimed should be the lower of the following:

(a) The amount claimed as building depreciation in your latest Federal Income Tax Return

As Compared To

(b) 2% of the assessed valuation of the Building exclusive of the Land.

Or

2% of that portion of the Total purchase price of the property (if acquired since March 15, 1958) representing Building value, if such total purchase price is being claimed as the Valuation Basis.

That part of the total purchase price to be assigned as Building value should be determined by applying the ratio relationship found in the assessed valuation of the property. Example: Assume the total assessed valuation of the property to be $10,000.00 of which the Building valuation is $8,000.00. Thus it is found that the Building Assessed Valuation is 80% of the total. Assume further that the property was purchased since March 15, 1958 for a price of $15,000.00. Accordingly the 80% ratio as applied to the $15,000.00 total purchase cost of the property, would establish $12,000.00 as that portion representing the value of the Building alone. The 2% depreciation allowance is to be computed on this amount.

The schedule to be prepared for this item (designate as Schedule L) should indicate your computation of the depreciation allowance claimed in the application. An exact transcript of the schedule of depreciation as shown in your latest Federal Income Tax Return should also be included. Where no deduction for depreciation has been made in your latest Federal Income Tax Return, submit reason why none was claimed.

Valuation Basis — Items 23 and 24

If the property was purchased by the present owner before March 15, 1958, entry should only be made in Item 23. If the property was purchased since March 15, 1958, fill in both Items 23 and 24.

Enter in Item 23, the assessed valuation of the property in effect at the time of filing the application. This amount should be the same as the total shown in Sub-Item a. of Item 6 on the front of the application.

If the property was acquired since March 15, 1958, as a result of a bona fide sales transaction, enter the purchase price in Item 24.

Contracts of sale, closing statements, assignment agreements and other documents relative to the sales transaction should be submitted at the time of filing the application.

Net Annual Return Claimed — Item 25

Compute this item as 6% of amount shown in either Item 23 or 24, in accordance with the following instructions:

(a) Where only the assessed valuation, Item 23, is entered because the property was purchased before March 15, 1958, the 6% computation should be made on this amount.

(b) Where Item 24 shows the purchase Price since March 15, 1958, and this amount is **greater** than the assessed valuation shown in Item 23, you may compute your 6% return on such purchase price, **only** if you have owned the property for more than two years at the time of filing this application. If two years have not elapsed since the date of the sale, the 6% return should be determined on the assessed valuation shown in Item 23.

(c) Where the purchase price in Item 24 is **less** than the assessed valuation shown in Item 23, the two year ownership requirement does not apply and the 6% return computation should be based on this lower purchase price.

INSTRUCTIONS FOR FILING

An original and one copy of Forms A-33.5S and A-33.5A, together with an original and one copy of all required schedules, must be filed with the District Rent Office by delivery or mailing. The landlord is also required to file an additional copy of Forms A-33.5S and A-33.5A for each housing accommodation affected by the application, with the name and mailing address of the tenant inserted in Item 2 of Form A-33.5S. These copies will be served upon the tenants by the District Rent and Rehabilitation Director.

Where the present owner acquired title to the property since March 15, 1958, the owner is also required to file a supplemental statement, Form 33.5 Supplement, with the application. An original and two copies of this form must be filed together with two copies of the contract of sale, closing statement, assignment agreements and other documents relative to the sales transaction.

Before filing the application be sure to sign all copies and have the original sworn to before a Notary Public or other person authorized to administer oaths. The application must be signed by the individual owner or a partner or corporate officer if the building is owned by a partnership or corporation.

THE CITY OF NEW YORK

CITY RENT and REHABILITATION ADMINISTRATION

ROBERT F. WAGNER
MAYOR

HORTENSE W. GABEL
ADMINISTRATOR

INSTRUCTION SHEET No. 2

To be used for the preparation and filing of

LANDLORD'S APPLICATION FOR INCREASE OF MAXIMUM RENT (FAIR RETURN)

(Section 33.5 of the Regulations)

The information set forth in this instruction sheet should be carefully read and followed. Before filing any application pursuant to Section 33.5, special note should be taken of the following conditions:

a—No application may be filed unless

(1) a certificate of the Department of Buildings is annexed to the application stating that no violations against such property are recorded in the Index maintained by the Central Violations Bureau of such Department; and

(2) more than two years have elapsed since the date of filing a previous "Fair Return" application which resulted in an order granting a rent increase.

b—If the property was acquired since March 15, 1958, the purchase price may be claimed as your "Valuation Basis." However, where such purchase price is greater than the current assessed valuation, it will only be considered for use as the valuation basis if more than two years have elapsed between the date of the sale and the date of filing your application.

Part A—Instructions For Preparation of Application Preparation of Form A-33.5 and Form A-33.5M

Instruction 1—Name and mailing address of landlord — Item 1.

Enter name of landlord and that of his representative, if any. Address and telephone number of landlord or his representative should also be shown.

Instruction 2—Name and mailing address of tenant — Item 2.

On the original and duplicate, this item is to be left blank. See Instruction 23 for the manner in which those copies to be served upon individual tenants are to be completed.

Instruction 3—Address of property — Item 3.

Enter the address of the property for which the application is being filed.

Instruction 4—Building Data — Item 4.

Enter separately the number of dwelling units (including those units occupied by landlord or superintendent, or occupied rent-free), the number of stores, units for professional or business use, garages, and the total of all units. Also, enter the total number of rooms, exclusive of bathrooms.

Instruction 5—Acquisition and Construction Data — Item 5.

(a) Enter the date the property was acquired by the present owner and the cost. Also indicate the manner of acquisition by checking either "Purchase" or "Otherwise." If the latter, attach explanation.

(b) Check whether building is brick or frame; if other, specify. Also indicate year of construction.

(c) Enter the number of stories; check "Yes" or "No" whether there are any elevators on the premises. If "Yes," indicate number of automatic and of manual elevators.

(d) State the type of fuel currently in use for supplying heat and/or hot water and also the full storage capacity of the fuel tank or bin.

Instruction 6—Assessment Data — Item 6.

(a) Enter total assessed valuation in effect at the time of filing application and the specific amounts for "Land" and "Building," in the appropriate spaces. The breakdown of such total into "Land" and "Building" can be obtained from the office of the Tax Commission of the Borough in which the property is located.

(b) and (c) This information should be copied from the tax bill.

(d) Proceedings are considered to be "pending" for any of the three indicated tax years, where a protest of the assessed valuation has been filed with the Tax Commission and the time for filing writs or appeals has not expired; or where writ(s) of certiorari have been filed with no final disposition in such actions yet determined.

(e) Where reductions were secured in any of the two indicated tax years, this information should be taken from notice of final settlement with the Tax Commission or any court order directing same. (Attach copies of such notices.)

Instruction 6a—Prior Rent Increases—Item 6a.

It is important that the information with regard to prior rent increases be accurately stated.

Instruction 7—Test Year — Item 7.

You may select as your "Test Year" one of the following:

(a) The most recent calendar year (January 1st to December 31st).

(b) Your most recent fiscal year (one year ending at a date other than December 31st, provided that books of account are maintained and closed accordingly).

(c) Any 12 consecutive months ending within 90 days prior to the date of filing of this application. Such period must end on the last day of a month.

Instruction 8—Rental Income — Item 8.

Enter in Item 8 the total annual rental income from Column 5 of Form A-33.5A, preparation of which is covered by Instruction 22. It is to be noted that this total should include the annual rental income from all sources, i.e., dwelling units, stores, units for professional or business use and garages.

Instruction 9—Miscellaneous Income (Other Than Rents) — Item 9.

List in a separate schedule and enter in Item 9 income received from the operation of washing machines and other laundry equipment, vending machines, sign rentals, etc. during the "test year" (designate as Schedule B). Indicate the types of machines, the number of each, and the charges for the use of same. Receipts or reimbursements for the use of water, gas, electricity, telephone, fuel or other services should not

be included in this Item, but should be reflected as credits in reduction of the costs incurred to provide such services. Where there is no "Miscellaneous Income," enter "None" in Item 9.

Instruction 10—**Total Income — Item 10.**

Enter total of Items 8 plus 9.

Instruction 11—**Fuel — Item 11.**

Enter the cost of all fuel used during the "test year" for the operation of the property. Attach to the application a schedule (designate as Schedule C) showing the following:

DATE OF DELIVERY	VENDOR	TONS OR GALLONS	TYPE	AMOUNT

Instruction 12—**Utilities — Item 12.**

Enter the cost for the "test year" of water and sewer charges and of all gas and electric service supplied to the tenants. Water and sewer charges may be claimed per bill in effect at the time of filing the application. Costs for electricity, gas or telephone paid for building employees should be reflected in "Payroll and Related Costs" — Item 13. The schedule to be prepared should show the following for each type of expense (designate as Schedule D):

PERIOD			
FROM	TO	TYPE OF SERVICE	AMOUNT

Instruction 13—**Payroll and Related Costs; or Owner's Janitorial Allowance — Item 13.**

Salaries and wages and related payroll costs for employees, or janitorial allowance claimed by the owner for his own services, should be entered under this item.

For any landlord who personally performs the janitorial services (such as cleaning halls, attending to heating system, cleaning of walks, etc.), in buildings containing 12 residential units or less the amount that will be allowed is $5.00 per month per residential unit including any apartment occupied by the owner. This computed claim for "Owner's Janitorial Allowance" should be accompanied by a statement describing the nature of the janitorial services that he performs (designate as Schedule E).

Where a property has a payroll of one or more employees required for its servicing and operation, (such as superintendent, elevator operators, doormen, porters and handymen), the amount of salaries and wages paid to such employees for the "test year," plus the amount of rental allowance for apartments occupied by employees should be entered under this item and set forth in the schedule in the following manner (designate as Schedule E):

EMPLOYEE'S NAME	REGULAR OR PART-TIME	SERVICES PERFORMED	WAGE RATE (MONTHLY OR WEEKLY)	AMOUNT PAID FOR TEST YEAR

Expenditures directly related to the amount of salaries and wages paid for the "test year" such as social security and unemployment taxes, welfare and pension payments, and disability and workmen's compensation insurance expenses are to be added to the salaries and wages scheduled.

Salaries and wages and related costs paid for the "test year" period for repairs and maintenance work (such as wages of painters, carpenters, etc.) or for executive or administrative services should not be entered under this item.

Payroll and related costs may also be claimed in a "projected" amount. Computation can be made to adjust the "test year" experience to new wage rates or other payroll changes at the time of filing the application.

Instruction 14—**Real Estate Taxes — Item 14.**

Set forth in a schedule and enter the amount of real estate taxes payable for the tax-year in effect at the time the application is filed (designate as Schedule F).

Instruction 15—**Insurance — Item 15.**

Enter the annual costs either of premiums allocable to the "test year" or of premiums for policies in effect at the time of filing the application for insuring the building and contents for fire, tornado, sprinkler leakage, boiler, plate glass and public liability, etc.

The gross annual premium costs are to be reduced by all credits which have been or may be received, such as dividends, rate adjustments, etc.

This schedule (designate as Schedule G) should show the following:

TYPE OF INSURANCE	AMOUNT OF COVERAGE	FROM: (Date)	TO: (Date)	TERM (No. of Years)	TOTAL PREMIUM	ANNUAL COST

Instruction 16—**Management Expense or Owner's Management Allowance — Item 16.**

Enter all management fees chargeable to the operation of the property. Where fees for such service are payable to an individual designated by the owner, or to an outside managing agent, this cost should be computed by applying to Total Income (Item 10) that percentage or rate which was paid or payable during the "test year." Where no fees are paid or payable, and the property is owner-managed, an allowance may be claimed. Such allowance is in recognition of management work performed by the landlord, such as collecting rents, negotiating leases, purchasing supplies and equipment, supervising employees, and the maintenance of the property. This allowance is to be computed by applying to Total Income (Item 10) the same rate of commission as would be payable to a managing agent for a comparable building. If the property is managed by the owner, a statement should be submitted detailing the services performed by him.

Management expenses claimed for agent's or owner's services will usually be limited to the following ceilings:

(1) For properties with Total Income (Item 10) of less than $100,000.00:
5% of Total Income.

(2) For properties with Total Income (Item 10) of more than $100,000.00:

(a) 5% on the first $100,000.00 where average residential monthly rental per unit is below $100.00

or

4% on the first $100,000.00 where average residential monthly rental per unit exceeds $100.00.

(b) On excess over $100,000.00;
3% — From $100,000.01 to $200,000.00,
2% — From $200,000.01 to $500,000.00,
1% — From $500,000.01 up.

This schedule (designate as Schedule H) should show the following:

MANAGED BY	BASIS OF COMPUTATION	ANNUAL AMOUNT

Instruction 17—**Repairs and Maintenance — Item 17.**

Annual cost to be entered under this item should be that amount computed as the average of repair and maintenance expenses incurred for a four year period ending with the last month of the "test year."

This average of a four year cycle of "repair and maintenance" expenses is for the purpose of establishing for the "test year" an annual amount which would be normally recurrent. Where the applicant is unable to present such costs for a four year period he should submit an explanation.

Where the applicant has been the owner of the property for less than four years, the bills and data of the previous owner of the property should be used to complete the four year experience.

Expenditures for repairs and maintenance to be considered under this category are such items as painting and decorating, plumbing repairs, carpentry, electrical and general repairs and supplies. Wages and related costs paid to employees performing repair services and the costs of service contracts for oil burner, refrigeration and elevator maintenance, should also be included. Do not include items of the nature described in Instruction 18.

In presenting repair and maintenance expenses, separate schedules should be prepared for **each** of the four years, listing in detail all invoices for those costs incurred in **each** year (designate as Schedule I). Totals should be taken for **each** of the four years and these totals should then be separately stated

and the one year average shown on the schedule and enter in Item 17. The schedules prepared to show the itemization for each of the four years should be arranged as follows:

DATE OF INVOICE	VENDOR	TYPE OF REPAIR	LOCATION (APT. NO. LOBBY, ETC.)	AMOUNT

Any credits received (such as allowances in price, returns of merchandise, reimbursements from tenants, payments from insurance carriers for damages, etc.) are to be noted and deducted from the total costs for the period covered.

For buildings containing 40 or more residential units, where books of account are maintained in which all transactions of the property during the year are recorded and said transactions are properly totaled and summarized at the end of each year, repair and maintenance expenses may be set forth in Schedule I in the following fashion:

> Invoices covering expenses for those years required may be listed in detail in the manner described above, or if the applicant elects, he may present the general ledger totals of each category of repair and maintenance costs which made up the total of repair and maintenance expense, for the required years. This presentation of book totals should follow the same classifications reflected in the books of account, such as painting (within apartments), painting (within building-lobby, halls, etc.), exterior painting (windows, sashes, fire escapes, etc.), carpentry repairs, plumbing repairs, electrical repairs, mechanical repairs, supplies, misc. repairs, etc.

OPTIONAL INSTRUCTIONS FOR BUILDINGS CONTAINING 12 OR LESS RESIDENTIAL UNITS

(the green Application Form A-33.5S must be used)

Where a building contains 12 or less residential units, the landlord may use 13% of the "Annual Rental Income," Item 8, for the combined Items 17 and 18 ("Repairs and Maintenance" and "Replacements and Improvements") in lieu of preparing and substantiating Schedules "I" and "J" in detail. Where a substantial portion of the "Annual Rental Income", Item 8, is derived from commercial tenants, the Administrator reserves the right to review the acceptability of the 13% allowance claimed. Complete details with respect to the preparation of this form is contained in Instruction Sheet No. 1.

OPTIONAL INSTRUCTIONS FOR BUILDINGS CONTAINING 13 TO 39 RESIDENTIAL UNITS

(the buff Application Form A-33.5M must be used)

Where a building contains from 13 to 39 residential units, inclusive, the landlord may use 11% (for "walk-up" buildings) or 8½% (for "elevator" buildings) of the "Annual Rental Income," Item 8, for the combined Items 17 and 18 ("Repairs and Maintenance" and "Replacements and Improvements") in lieu of preparing and substantiating Schedules "I" and "J" in detail. Where a substantial portion of the "Annual Rental Income," Item 8, is derived from commercial tenants, the Administrator reserves the right to review the acceptability of the ratio allowance claimed.

Instruction 18—**Replacements and Improvements — Item 18.**

Enter one year's proration of the cost of all improvements and replacements made since the date the property was acquired by the present owner and not fully depreciated. This should be computed in accordance with the average useful lives set forth in Bulletin "F" issued by the U. S. Treasury Department, examples of which are listed below:

Item	Useful Life
Cooking Ranges	8 yrs.
Sinks	20 yrs.
Kitchen Cabinets	20 yrs.
Roofing (Tar and Gravel)	20 yrs.
Boilers	20 yrs.
Refrigerators	15 yrs.

Bulletin "F" will be used unless the landlord can establish, on the basis of his own experience, useful lives which differ from the life expectancies set forth therein.

The schedule for this item (designate as Schedule J) should show the following:

DATE ACQUIRED	VENDOR	ITEM	WHERE USED (APT. NO.)	COST	USEFUL LIFE	CHARGE TO TEST YEAR

Cost of Rehabilitation or Major Capital Improvements for which rental increases were received prior to May 1, 1962, pursuant to § 33(1)(b) [substantial rehabilitation] or § 33(1)(c) [major capital improvement] of the State Rent and Eviction Regulations, or since May 1, 1962 under § 33.1b or § 33.1c of the City Rent, Eviction and Rehabilitation Regulations, may be considered in the following manner:

> A write-off of such costs may be charged to the "test year" in an amount equal to the annual increase in rents received. Where the rental increase granted compensated the owner not only for the cost of the improvement but also for an attendant additional operating expense (such as installation of a central heating system, necessitating a new or additional cost of fuel) the annual charge to be reflected in the "test year" should be that amount which will permit recoupment of the cost of the improvement only. (The new or additional cost of fuel will be reflected in the application as "fuel" expense.)
>
> The above write-off procedure should not be used, if on the date the application is filed the owner had fully recovered his cost by virtue of the amount of rental increases already collected. In such instance the "test year" charge should be computed based upon that useful life prescribed in Bulletin "F".

Instruction 19—**Miscellaneous — Item 19.**

Enter all expenses incurred in the "test year" necessary to the operation of the property and not otherwise classified (such as legal and accounting fees, exterminating, upkeep of uniforms, permit and inspection fees, etc.). Mortgage interest and amortization are not to be included as operating expenses of the building.

Legal and accounting fees may be included as they apply to the operation of the building rather than to the financial or personal affairs of the ownership. These costs should be shown for a three year period ending with the last month of the "test year" and the one year average entered under this item. Where such fees claimed were paid for professional services rendered in connection with prior applications, the amounts to be included in the three year average shall be the amounts actually paid but not to exceed 25% of the actual amount of the increases ordered in the prior applications. The schedule (designate as Schedule K) should show the following:

DATE OF INVOICE	VENDOR	TYPE OF EXPENSE	AMOUNT

Instruction 20—**Depreciation — Item 20.**

Enter the lower of the following:

(1) The amount of depreciation claimed in the latest Federal Income Tax Return; or

(2) 2% of the assessed valuation of the building exclusive of the land; or, where the purchase price is being claimed as the "valuation basis" 2% on that part of the purchase price which represents the building value. To establish such building value one must apply to the total purchase price the same ratio that the assessed valuation of the building bears to the total of the current assessed valuation. Example: Assume the property's total assessed valuation to be $10,000.00 of which the building valuation is $8,000.00. This establishes 80% as the ratio of the building's valuation. Accordingly 80% would be the ratio applied to whatever purchase price is claimed as the "valuation basis." The 2% depreciation allowance is to be computed on the amount thus determined.

The schedule for this item (designate as Schedule L) should show the applicant's computation for the depreciation allowance claimed. Also submit an exact copy of the depreciation schedule shown on the Federal Income Tax Return followed by this statement: "This schedule has been transcribed from the latest Federal Income Tax Return covering the tax year ending on

_____ (Month) _____ (Day) _____ (Year)."

Instruction 21—Computation of Net Annual Return and Rent Adjustment Indicated — Items 23, 24, 25 and 26.

Part A—Enter in Item 23 the assessed valuation of the property, in effect at the time of filing the application (Sub. Item a of Item 6). Such amount will be considered as the "valuation basis" except as otherwise provided in paragraph b of Section 33.5 of the Regulations.

Part B—Where the property was acquired since March 15, 1958, in a bona fide sales transaction (as defined in paragraph b of Section 33.5 of the Regulations) enter this amount in Item 24. If such sale was for an amount greater than the assessed valuation in Part A above, such purchase price may be used as the "valuation basis" if on the date of filing the application, more than two years will have elapsed since the sale. Where a purchase price since March 15, 1958 was less than the assessed valuation in Part A above, the two year ownership requirement does not apply and such purchase price may be used as the "valuation basis."

Preparation of Form A-33.5A

Instruction 22—Rental Income — Schedule A.

All controlled, decontrolled, uncontrolled and commercial units in the property are to be listed at the rent in effect at the time the application is filed. For any units that are vacant or occupied in whole or in part rent-free, the rental value must be listed. If such unit is a controlled housing accommodation, the amount to be shown should be the maximum rent in effect, even if rented for less. If such space is decontrolled housing, commercial or business, its full rental value should be entered on this schedule. This includes any units occupied by the landlord or his employees.

In Column 2, place a check-mark next to all uncontrolled, decontrolled, business and commercial space. Attach a separate schedule listing all units so indicated, stating the rents collected from each unit on March 1, 1943 or on the earliest known date thereafter.

Filing Application

Instruction 23—Filing.

An original and one copy of Forms A-33.5 and A-33.5A, together with an original and one copy of all required schedules, must be filed with the District Rent Office by delivery or mailing. The landlord is also required to file an additional copy of Forms A-33.5 and A-33.5A for each housing accommodation affected by the application, with the name and mailing address of the tenant inserted in Item 2 on Form A-33.5. These copies will be served upon the tenants by the District Rent and Rehabilitation Director.

Where the present owner acquired title to the property since March 15, 1958, the owner is also required to file a supplemental statement [Form 33.5 Supplement] with the application. An original and two copies of this form must be filed together with two copies of the contract of sale, closing statement, assignment agreements and other documents relative to the sales transaction.

Where a property contains more than 40 residential units, the requirement to serve a copy of the rent roll [Form A-33.5A] upon each tenant may be waived upon application to the District Rent and Rehabilitation Director. If a waiver is granted, the landlord must be prepared to make the rent roll available to the tenants at such places and at such times as the District Rent and Rehabilitation Director deems to be reasonable. The application for a waiver of individual service of Form A-33.5A should be made by letter addressed to the District Rent and Rehabilitation Director, giving the address of the property, the total number of rental units, and the number of controlled residential units.

Before filing the application, be sure to sign all copies and have the original sworn to before a Notary Public or other person authorized to administer oaths. The application must be signed by the individual owner, or by a partner or corporate officer if the building is owned by a partnership or corporation.

Part B—Instructions for the Submission of Evidence

Introduction

At a date subsequent to the filing of the application, written notice will be sent for the submission of evidence. The evidence which will be required, is detailed in the Specific Instructions that follow.

To facilitate the processing of your case, it is suggested that all data necessary to fully substantiate all items claimed in your application, be presented to the Accounting Division in the following fashion:

(a) Assemble all bills and cancelled checks for same, and other supporting data, by category of expense. Arrange each invoice and canceled check in the same sequence in which the items to which they refer are listed in the schedule of your application. It is suggested that each cancelled check be fastened to the invoice which it paid. Bookkeeping records such as General Ledgers and books of original entry are also required for those years for which operating expenses are claimed in your application.

(b) After arranging data as described above, place such evidence into separate envelopes or packages for each category.

(c) Identify each envelope or package with the docket number of the application, the address of the property and the "Item" to which it relates, and place same into a secure package to be mailed or delivered to the Accounting Division. Be sure that the docket number and address of the property are clearly marked on the outside of this package.

Specific Instructions

The following specific instructions for submission of evidence are identified by the relevant Item number in Application Form A-33.5.

Item 7—Test Year

Where the test year selected ends on a date other than December 31st, submit an explanation stating:

(a) Whether your books are kept and closed on the basis of such fiscal year.

(b) Whether your Federal Income Tax was filed, or will be filed (if not due yet) with such fiscal year as its basis.

Item 8—Rental Income

Submit leases and other data to support present rentals of stores and business units. Also submit information as to the amount of rent being collected from each of these units on March 1, 1943 or the earliest known date thereafter.

Item 9—Miscellaneous Income

Submit copies of contracts with vendors or concessionaires. If machines are owner operated, present records to support income received during the "test year."

Item 11—Fuel

Submit invoices and delivery tickets for all fuel deliveries listed in your Schedule. Where invoices or tickets are missing, obtain duplicates from vendors. The vendor's statement listing all individual deliveries made, by date, quantity and amount, may be submitted instead.

Item 12—Utilities

Submit the bills listed in Schedule D of your application for electricity, gas, water and sewer. Note and comment as to any amounts which apply to personal use by the landlord.

Item 13—Payroll and Related Costs, or Owner's Janitorial Allowance

Where one or more persons are employed in the operation of the property, payroll records must be submitted to substanti-

ate the amount claimed in Schedule E. The evidence to be presented must support the expense of salaries and wages and other related costs incurred during the "test year" period. Where however, the expense claimed reflects an annual amount which projects wage rates in effect at the time of filing the application, payroll data for the period from the beginning of the "test year" to date should be submitted. The following payroll records are required covering the period specified above:

(a) Original weekly, bi-weekly, or monthly payroll sheets.

(b) Copies of the quarterly returns for Social Security Taxes.

(c) Copies of the quarterly State Unemployment Insurance Tax Returns.

(d) Copy of prevailing union contract, if any.

(e) Receipts for payments to union pension and welfare funds.

Also submit the following:

(f) Copy of latest Federal Unemployment Tax Return.

(g) Current Workmen's Compensation Insurance Policy and last audit report.

(h) Current Disability Benefits Insurance Policy.

(i) Cancelled checks in payment of wages to employees and for the related costs listed above.

Item 14—Real Estate Taxes

Submit the tax bill in efiect at the time of filing the application.

Item 15—Insurance

Submit all policies listed in Schedule G of your application plus all policies currently in force. If there has been any cancellation of insurance since the date of filing, explain same. Prepare a list of amounts, refunds or credits received from insurance companies, brokers, adjusters, or received as a result of claims, during or since the "test year." Describe the nature of each.

Item 16—Management Expense or Owner's Management Allowance

Submit a copy of the agreement or contract with the agent for the management of the property. If there is no written agreement or contract, affidavits by the landlord and the agent reciting this fact and explaining the arrangement for the payment of management fees, should be presented.

Item 17—Repairs and Maintenance

Submit the following:

(a) All the invoices listed in Schedule I of your application and cancelled checks in payment, arranged in the same order as in that Schedule.

(b) All credit bills for merchandise returned, or for allowances received, relating to invoices listed in Schedule I.

(c) Prepare a listing of payments received as refunds or allowances from vendors, reimbursements from tenants, or adjustments due to fire or other losses. Where recoveries have been received for fire or other damage, submit copy of settlement statement from insurer and a full explanation as to when and where damage was sustained, also specific costs incurred to repair same.

Item 18—Replacements and Improvements

Submit the following:

(a) All invoices listed in Schedule J of your application and cancelled checks in payment.

(b) A list of payments or allowances received on the trade-in or sale of equipment.

Item 19—Miscellaneous

Submit bills and cancelled checks for all costs listed in Schedule K.

Item 20—Depreciation

A transcript of the Depreciation Schedule in the latest Federal Income Tax Return should be submitted as part of Schedule L of the application. Where depreciation allowance is being claimed and no deduction for this item is made in your latest Federal Income Tax Return, submit an explanation.

Items 23 and 24—Valuation Basis

Tax bill to confirm the assessed valuation entered in Item 23 will have been presented in support of Real Estate Tax Expense claimed in Item 14.

Where the property was acquired since March 15, 1958, contracts of sale, closing statements, assignment agreements and other documents relative to the sales transaction are to be submitted at the time of filing the application.

SPECIAL INSTRUCTIONS FOR HOTELS

Owners and operators of hotels applying under Section 33.5 of the Regulations must file their applications in accordance with the special instructions set forth below.

Form A-33.5—Complete all "Items" except Item 8 in the manner prescribed in this Instruction Sheet. Item 8, Rental Income, should reflect the actual income earned in the test year selected.

Operating expenses that cannot be classified into those categories listed on Form A-33.5, should be included in Item 19, Miscellaneous, and detailed in a supporting schedule.

Submit a statement reconciling the amount shown as the Net Return Earned In Test Year, Item 22, with that amount indicated as your Net Profit or Loss, as per your accountant's report or books of account for the same period.

In lieu of Form A-33.5A (Schedule A — Rental Income) submit the following supporting schedules:

Schedule A-1—**List of Controlled Tenants.** This list is to be prepared with columnar headings as follows:

(1) Unit number or designation

(2) Number of rooms

(3) Name of present tenant

(4) Term of occupancy (i.e., "D"-Day; "W"-Week, "M"—Month)

(5) Present maximum rent

Schedule A-2—Rooms—**Income Earned for the Test Year.**

From permanent tenants, including rentals from controlled tenants per Schedule A-1 ..... $

From transient tenants ..... $

Total Rooms—Income Earned for Test Year ..... $

The total amount appearing on this schedule is to be transferred to Form A-33.5, Item 8.

Schedule A-3—**Schedule of Present Occupancy.** This schedule is to be prepared as of the date of the application and is to show the following information:

	Number of Units	Number of Rooms
Controlled Tenants, per "Schedule A-1"..		
Other Permanent Tenants		
Transient		
For Employees' or Hotel's Own Use ...		
Unoccupied		
TOTAL — Entire Hotel		

I. S. No. 2-806185-25M-8-62 157

September 25, 1964

re: 106 & 108 East 11[redacted]th St
New York City

Mr. Judah Gribetz
Deputy Commissioner
Department of Buildings
Municipal Building 10007

Dear Commissioner;

I am an attorney for CORE and an associate of Mr. George Schiffer. I appeared in an eviction proceeding this morning involving ten tenants of the abovementioned buildings. The tenants have refused to pay further rent until numerous violations are corrected, most substantial of which are utter failure to heat, and complete lack of adequate water pressure and hot water.

The landlord has indicated a willingness to discontinue this entire matter and repair the buildings, which, of course, is the best solution for all. However, in order to facilitate the repairs and establish a schedule so that the tenants can resume use of the premises and the landlord his rent, it is imperative that a full cellar to roof inspection be made at once.

In order that neither party should later claim any unfairness in the inspection, both have agreed to accompany the inspector and, we anticipate, to thereafter negotiate in good faith to make the buildings tenantable.

With our city's history of time consuming, expensive and unsatisfactory rent strikes, this present situation offers us a most pleasant alternative which may, if successful, pave the way not only to better buildings but better relationships between owners and tenants. All our interests are better served when we discuss our problems out of court rather than litigate, which is at best a poor substitute not particularly satisfying.

I will therefore call your office Monday morning to arrange an inspection as soon as possible. Your attention to this matter will be greatly appreciated.

Sincerely,

Jules D. Zalon[redacted].

November 18, 1964

Mr. H. F. Riley
Executive Housing Assistant
Room 1022
Municipal Building
New York, New York

Dear Mr. Riley:

Pursuant to our telephone conversation this morning, I am writing in request of an inspection for the two buildings located at 106 and 108 East 124th Street, in New York City. As I told you, and as I had discussed with Commissioner Gribetz' office earlier, this involved a number of violations in the two buildings, most urgent of which was the utter lack of hot water and poor water pressure.

Since this matter first arose, the tenants and the landlord entered into a written agreement whereby the tenants paid rent which had been held up pending repairs, and the landlord promised to correct these violations on or before November 1st. This date has come and gone, and as yet there has been no improvement. Quite the contrary, there has been not only no hot water, but more often than not, there has been no water at all. And while there has been some indication of work proceeding intermittently on the premises, in the past week the pipes burst and the plumber stopped all work and took his tools with him the last time he was there.

As the landlord, in violation of the agreement, is now suing for eviction without having made the slightest improvement in the facilities, it is imperative that an inspection be made at once. Also, as the people work during the day, and as access is necessary in order to substantiate these claims of violation, it is necessary that the tenants be noti-

fied as to the approximate time of the inspection, so that they may pool their keys and have one tenant remain on the premises to allow the inspector the needed access.

When this somewhat novel attempt at ameliorating the differences between the parties was first considered, Commissioner Griberts' office promised full cooperation in obtaining any inspection necessary, together with assurances of notification to me in order to facilitate the inspection. I am most grateful that your office continues to show the same interest and consideration.

I shall call Mr. Tytell this afternoon, as per your suggestion, in furtherance of this matter.

Very truly yours,

JULES D. ZALON

JDZ:mac

December 24, 1964

Mr. Louis Smith
CORE Northeast Regional Director
48 West 125th Street
New York, N.Y. 10027

Dear Lou;

Enclosed find a list of buildings owned or run by Joseph DiGirolimo, the slum-lord George spoke to you about last night. As you now know, David Konstan has been in the buildings on East 124th Street for a few months now, and is getting a little weary. David came to the buildings from the East River Chapter.

I have been in contact with the Department of Buildings, and Konstan is preparing a list of defents, apartment by apartment, to be sent to the Department some time next week. He plans to get started on Monday, and acknowledges that he could use some assistance. He has been instructed that in this inspection which we will carry out, prior to a full search inspection by the Department, no slight defect should be overlooked; the Department inspectors will then check every item mentioned on this list, so that we cover everything twice.

Notice my caveat on the list that we may not have a complete picture of DiGirolimo's holdings at this time, as he may have dumped some when he felt a money squeeze, and the original list did not even have our East 124th Street buildings; however, this should be a gohh starter.

With best personal regards,

Jules

enc.

Jan. 2, 1965

Dear Mr. Zalon,

Once again a letter has failed to reach your office, so I am sending it to your home.

Concerning the inspection reports: the abbreviations NW, WW, etc., stand for North Wall, West Wall, etc.

You will notice that many of the apartments have few if any violations, and none that are significant. In these cases, it is generally true that the tenants themselves have invested time and money into the improvements of their dwellings, but in a sense this can be justified by the inordinately low rents they are paying. In some apartments it is difficult to find a crack in the wall.

In 106, you will notice that the apartments around 5E (Mrs. Lugo's) show serious damage; for example, 4E (Marquez) has a major portion of the bathroom ceiling missing, due to overflowing water from above, about a month ago. It is obviously the landlord's obligation to repair this, but the situation does not call for a vendetta against him.

Most important, from the point of view of the tenants, an inspection in many cases will probably mean a rise in rents. DiGirolamo is more than willing to replace window chains in excahnge for a doubled rent roll. This, it seems most important to get Di G. to complete the repairs on the plumbing, which is now failing mainly in 106 apts. 5E and 5W.

There are, of course, many other buildings which reveal the wholesale degeneration which could embarass the buildings dept. if they should fail to take action, and this, if I understand your plan correctly, is a major desideratum.

Dave.

106 E 124 St. Jesus Velasquez

[redacted] 2E

#1

Window lock broken
drafty window

#2

EW

No window chains

CW

hole by pipe + leak
- hole in ceiling over pipe

#3 broken window

NW

under tub - large rat holes

SW

rathole at floor

Broken wall behind door posts

#4

- Valve on radiator is loose
- No knob on radiator

#5

#6

#7 No knob on radiator

EW

Woodwork cracked + broken behind bed

No window locks
No chain in window

106 Moise Colon

3E

#2

Leak in ceiling

Mr. Jose Lugo

3W

#1

No lock on window
window sill rotted

#2 EW hole by pipe

Ceiling peeling
Hot water pipe in sink clogged

#3 No chain on window
No hot water in tub
Broken faucet fixtures
Rotting door posts

#4

WW
plaster loose above pipe

#5

#6

#7 WW
floor broken by steam

106

Ramon Aromi

4W

#1 SE Wall
very large hole

#2 EW
enormous hall by pipe

NW
leak under pipe
whole pink area corroded

#3 Hole behind refrigerator

SW
holes + cracks
- peeling ceiling
- holes over steam pipe
Ceiling very weak

#4

#5

#6

#7

106 Marquez

4E

#1 SW
Chipped plaster

#2

#3
large part of ceiling missing

#3a (foyer)
SW
Hole in ceiling

#4 Cracks & leaks in ceiling

#5

#6
Overhead light broken
SW
Window chain broken

#7
Windows are drafty
No knob on radiator

108

Rosario

4E

#1 SW
window pane insecure
(right - lower)

#2 EW
worn out window frame
gas leak in stove

#3
SW
toilet pipe leaks
corroding wall

#4 radiator leaks knob

#5 WW
hole behind doorknob

#6

#7

~~Candelle~~ Pedro Colon

108

4W

#1

#2

#3 Ceiling peeled

EW hole over pipe

#4

#5

#6

SW window needs chain

#7

108 Carlos Martinez

3W

#1 WW
numerous holes throughout
ceiling badly peele.l

SW
holes + cracks

Plaster bad on all walls

#2
NW
crack + hole in wall

WW
peeling + chipping plaster

#3
EW
hole on top over steampipe

#4
Ceiling peeled
SW
hole over woodwork

#5
Badly leaking ceiling during rain

#6
WW
chipped plaster
EW
#7 holes in wall
WW
large deep crack by ceiling
peeling ceiling

108 Aurelio Herrera

3E

#1

#2

#3 SW
hole over pipe
poor drain pipe in Tub

#4

#5

SW
bellies over door

#6

108 E. 124 St. Pura Velez

IW

#1 (South W)
rotten window frame

#2 (Kitchen)

WWall
① hole in ceiling + leak over pipes ② rat hole at floor under pipe

NWall
Leak in ceiling

Ceiling peeling

Cold water faucet - heavy leak

#3 (Bathroom)

toilet seat unattached

#4 (Living Room)

radiator - leaks + insufficient heat

WW

rat hole on floor under steam pipe

ceiling peeling

#5

Broken ceiling light

#6 EW
Holes in wall

106

#5W Williams

#1

#2 EW
Hole over pipe
No hot water in hot water

#3 No hot water in bathtub
WW
Behind tub - rat hole

#4
WW
Behind radiator - hole

#5

#6

#7

106 Josephine Lugo

#5E

#1

#2
No hot water at all
No cold water in sink

SW
hole in floor

#3
No hot water

#4
SW
large hole
EW
large hole behind radiator
WW
holes

#5
Holes in ceiling
Ceiling light broken
Ceiling - bad leak
Walls chipped & broken all over

#6

#7
Holes in Ceiling
Leaky ceiling when it rains
All walls badly chipped

...of Wisconsin

Please Retain Original Order

PAGGETT, GLENN RAY + FLOWERS, TOM JEFFERSON vs. STATE OF LOUISIANA, 1965 Box 41 Folder 21

10/13

United States Court of Appeals for the Fifth Circuit

New Orleans La.

October 12, 1965

FOR INFORMATION OF ALL COUNSEL—PLEASE READ CAREFULLY:

Re: No. 22839 - GLENN RAY PAGGETT and TOM JEFFERSON FLOWERS vs. STATE OF LOUISIANA

The record in the above entitled case is in final form. The time for filing BRIEFS is indicated in the following rule.

RULE 24, as amended, Subsections 1, 3 and 4 OF THIS COURT, READ IN PERTINENT PART AS FOLLOWS:

1. The Clerk shall mail a notice to each party or his counsel so soon as the record by printing, or otherwise, is in final form for a hearing. The counsel for the appellant, or petitioner, shall file with the Clerk of this Court within thirty days from the RECEIPT of such notice *** twenty copies of a printed brief, one to be signed in handwriting by an attorney of this Court who has entered an appearance in the case; together with a certificate that a copy has been mailed to or previously served on the opposite party or parties. Four copies of typewritten briefs in behalf of poor persons in forma pauperis cases, with a like certificate of service, shall be sufficient. [All such typewritten briefs (motions or petitions, etc.) should be backed when filed.]**

3. The Counsel for appellee or respondent shall file with the Clerk of this court within twenty (20) days from the service upon him of opponent's brief *** twenty copies of a printed brief, with a certificate that a copy has been mailed to or personally served on his opponent or opponents. His brief shall be of a like character with that required of the appellant or petitioner, except that no specification of errors shall be required and no statement of the case unless that presented by the appellant or petitioner is controverted.**

4. Reply or supplemental briefs in printed form, and containing a certificate of service upon opposing counsel, may be filed at any time without special leave of court.

Certificate of service upon *all* opposing counsel *must* be incorporated in *all* copies of briefs, motions, petitions or other documents filed.

Since the Court desires that briefs from all parties be on file for its consideration well in advance of the assigned date for hearing, counsel should make every effort to file their briefs by the date due.

Notice will be issued to all counsel for whom an appearance has been entered of the date and place fixed for hearing, usually at least thirty (30) days in advance thereof.

RULE 25, as amended January 19, 1956, reads in part as follows:

"Not more than one-half hour on each side will be allowed for the argument, without special leave of the court **." (See important notation below)*

However, counsel for any party may waive oral argument and submit his case on brief, if he so desires, and notifies this office by the date fixed for hearing.

Any written request for special handling not provided for in the Rules, whether by formal motion, letter or otherwise, as well as any information which counsel desire the Clerk to communicate to the Court, should be submitted in quadruplicate, with an original and three legible copies.

EDWARD W. WADSWORTH
Clerk

* In order to facilitate the calendaring of the cases so that each day's arguments will not be unduly extended, the Clerk's office must be advised by the time the briefs are filed as to how many counsel will expect argument (not more than two for each party), and how much time each will need. This is particularly true of multi-party appeals. The Court upon the hearing "may allow such less time as shall appear to it sufficient for a fair presentation of the questions involved . . ." Rule 25 (3).

UNITED STATES

COURT OF APPEALS

FIFTH CIRCUIT

No.

GLEN RAY PAGGETT, ET AL.

Appellants

versus

STATE OF LOUISIANA

Appellee

Appeal from United States District Court
for the Western District of Louisiana

Multilith Record

I N D E X

1.	Removal Petition	1
2.	Notice of Filing of Petition to Remove	5
3.	Motion to Remand	6
4.	Transcript of Proceedings	8
	Witnesses:	
	For Movant:	
	Tom Jefferson Flowers	10
	Leon Russell	18
	Nora Amos, Jr.	25
	For Respondent:	
	J. Roy Caskey	32
	H. N. Davis	36
	R. W. Wasson	41
	Percy E. Brown	44
	Frank M. Dougherty	48
	Huey P. Vernon	51
	Ledrue King	54
	Certificate	58
5.	Notice of Appeal	59
6.	Motion for Stay Pending Appeal and Order	60 62
7.	Designation of Contents of Record on Appeal	63
8.	Motion to Extend Time Within Which to File the Record on Appeal and Order	64 65

SIDNEY YOUNG, COURT REPORTER, 311 FEDERAL BUILDING, SHREVEPORT, LOUISIANA

SIDNEY YOUNG, COURT REPORTER, 311 FEDERAL BUILDING, SHREVEPORT, LOUISIANA

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

SHREVEPORT DIVISION

NO. 17,281
CRIMINAL

STATE OF LOUISIANA

Appellee

vs

GLENN RAY PAGGETT and
TOM JEFFERSON FLOWERS

Appellants

Appeal from United States District Court for the Western District of Louisiana

---

TRANSCRIPT OF RECORD ON APPEAL TAKEN BY DEFENDANTS-APPELLANTS

TO THE UNITED STATES COURT OF APPEALS, FIFTH CIRCUIT, NEW ORLEANS, LOUISIANA

A P P E A R A N C E S:

Messrs.
FRED L. JACKSON, District Attorney, and HAL HENDERSON, Assistant District Attorney, Bienville Parish, Louisiana, on behalf of Plaintiff-Appellee

MRS. FAITH A. SEIDENBERG and MR. JOHN M. BURNETT, Attorneys for Defendants-Appellants

---oOo---

SIDNEY YOUNG, COURT REPORTER, 311 FEDERAL BUILDING, SHREVEPORT, LOUISIANA

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF LOUISIANA

SHREVEPORT DIVISION

STATE OF LOUISIANA	:	CIVIL ACTION
versus	:	NO. 17,281
GLENN RAY PAGGETT and TOM JEFFERSON FLOWERS	:	DIVISION_____
: : : : : : : : : : : : :		REMOVAL PETITION

The petition of Glenn Ray Paggett and Tom Jefferson Flowers, persons of the full ages of majority and residents of this Judicial District with respect represents that:

I.

This Court has jurisdiction of this cause under Title 28 USC Section 1334 as well as Title 42, Sections 1983, 1985, 1971 and the Civil Rights Acts of 1957, 1960 and 1964. Said latter Act being Public Law 18-352 July 2, 1964, 71 Statutes 637, and 74 Statutes 90, as well as Title 28, Section 1443 (a) and (b). This Court has further jurisdiction under the Constitution of the United States, particularly Amendments I, IV, V, and XIV thereof.

II.

Petitioners were arrested at approximately 12:30

SIDNEY YOUNG, COURT REPORTER, 311 FEDERAL BUILDING, SHREVEPORT, LOUISIANA

A P P E A R A N C E S:

Messrs.
FRED L. JACKSON, District Attorney, and HAL HENDERSON, Assistant District Attorney, Bienville Parish, Louisiana, on behalf of Plaintiff-Appellee

MRS. FAITH A. SEIDENBERG and MR. JOHN M. BURNETT, Attorneys for Defendants-Appellants

---oOo---

SIDNEY YOUNG, COURT REPORTER, 311 FEDERAL BUILDING, SHREVEPORT, LOUISIANA

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF LOUISIANA

SHREVEPORT DIVISION

STATE OF LOUISIANA	:	CIVIL ACTION
versus	:	NO. 17,281
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II.

Petitioners were arrested at approximately 12:30

SIDNEY YOUNG, COURT REPORTER, 311 FEDERAL BUILDING, SHREVEPORT, LOUISIANA

P. M. on Monday, April 26, 1965 in Arcadia, Bienville Parish, Louisiana and placed in the Parish jail. Petitioner, Glenn Ray Paggett was charged with carrying a concealed weapon in violation of Revised Statute Title 14, Section 95 (1950 as amended). Petitioner, Tom Jefferson Flowers, was charged with that portion of the Louisiana Traffic Code relative to not having any brake lights on his automobile. Their trial in the Second Judicial District Court is now set for Friday, May 21, 1965.

III.

Petitioners are Civil Rights workers volunteering their services to the Congress of Racial Equality and at the time of their arrest were involved in Civil Rights activity, namely the organization of community efforts toward the registration of persons so as to make them eligible to vote in Federal and State elections. At the time of petitioners arrest, there was no probable cause for their being stopped and searched as occurred by Deputies of the Sheriff's office of Bienville Parish and members of the State Police. Said arrests, searches and seizures of their persons and automobiles was in violation of the Fourth Amendment, as well as an attempt on the part of the arresting officers to intimidate and harrass them in the exercise of their First Amendment rights, and specifically, their rights under Title 42 Section 1971, relative to the registration of persons so as

SIDNEY YOUNG, COURT REPORTER, 311 FEDERAL BUILDING, SHREVEPORT, LOUISIANA

to make them eligible to vote in Federal and State elections. At the time petitioners were arrested, they were engaged in the furtherance of said rights.

IV.

Petitioners are unable to exert and/or protect their equal Federal Rights in the Courts of the State of Louisiana, nor are they able to enforce in the Courts of the State of Louisiana laws of the United States providing for the equal civil rights of the citizens; and further, they were arrested for acting under color of authority derived from Statutes of the United States providing for equal civil rights, to wit, the Civil Rights Acts of 1957, 1960 and 1964 as above cited.

V.

Petitioners are entitled to and desire a fair trial and due process of law in the State Courts and are, because of the prejudicial atmosphere surrounding Civil Rights efforts in the Parish of Bienville and in the Northern part of the State of Louisiana generally, unable to receive a fair trial inasmuch as it is the stated policy of not only Bienville Parish authorities, but the authorities of the State of Louisiana and the community generally, to rigidly enforce a steel-hard policy of racial segregation in public and private accommodation; to restrict voting rights of Negro citizens; to harrass and intimidate

SIDNEY YOUNG, COURT REPORTER, 311 FEDERAL BUILDING, SHREVEPORT, LOUISIANA

civil rights workers, and to practive a policy of resistance to Federal Statutes and regulations. Not only is the stated policy of certain citizens of Bienville Parish and of the State of Louisiana generally to harrass and intimidate private citizens in the exercise of their civil rights, and particularly, their right to vote, but the laws of the State of Louisiana taken in toto along with customs and usages of the people of the State of Louisiana, and particularly Bienville Parish set forth a rigid policy of racial segregation which deprive petitioners herein of their rights to equal protection and due process of law, particularly as applied to their trial in State Court.

WHEREFORE, petitioners desire that this cause be filed in forma pauperis and that the criminal prosecutions of petitioners be removed from the Second Judicial District Court in and for the Parish of Bienville, State of Louisiana to the United States District Court for the Western District of Louisiana.

Further and finally, petitioners pray for all general and equitable relief.

/s/ Jessie N. Stone, Jr.
JESSIE N. STONE, JR.
854 1/2 Texas Avenue
Shreveport, Louisiana
Attorney for Petitioners

Of Counsel:

SMITH, WALTZER, JONES & PEEBLES
1006 Baronne Building
New Orleans, Louisiana

SIDNEY YOUNG, COURT REPORTER, 311 FEDERAL BUILDING, SHREVEPORT, LOUISIANA

(TITLE OMITTED)
NO. 17,281

NOTICE OF THE FILING OF PETITION TO REMOVE

TO HONORABLE FRED JACKSON, DISTRICT ATTORNEY, IN AND FOR BIENVILLE PARISH, LOUISIANA AND CLERK OF THE SECOND JUDICIAL DISTRICT COURT IN AND FOR BIENVILLE PARISH:

Please take notice that Glenn Ray Paggett and Tom Jefferson Flowers have this day filed Removal Petitions in the United States District Court, Western District of Louisiana, Shreveport Division seeking to remove charges pending against them in the Second Judicial District Court in and for the parish of Bienville as shown by copies of said petition annexed hereto.

THUS DONE AND SIGNED AT SHREVEPORT, LOUISIANA ON THIS 20TH DAY OF MAY, A.D., 1965.

/s/ Jesse N. Stone, Jr.
JESSE N. STONE, JR.
Attorney for Petitioners
854 1/2 Texas Avenue
Shreveport, Louisiana

Of Counsel:

SMITH, WALTZER, JONES & PEEBLES
1006 Baronne Building
New Orleans, Louisiana

Filed May 20, 1965
Alton L. Curtis, Clerk
U. S. District Court
Western District of Louisiana

---oOo---

SIDNEY YOUNG, COURT REPORTER, 311 FEDERAL BUILDING, SHREVEPORT, LOUISIANA

(TITLE OMITTED)

NO. 17,281

MOTION TO REMAND

NOW INTO COURT, through undersigned counsel, comes the State of Louisiana, and for answer herein says:

1.

Paragraph One is Denied.

2.

Paragraph Two is admitted, other than the trial was not set for Friday, May 21st, but said parties were to be arrainged on Friday, May 21, 1965.

3.

Paragraph Three is denied.

4.

Paragraph Four is denied.

5.

Paragraph Five is denied, further answering Respondent avers:

6.

That assuming all of the allegations of plaintiffs' petition as being true and correct, that the said petition for removal:

a) Fails to state facts showing that petitioners

SIDNEY YOUNG, COURT REPORTER, 311 FEDERAL BUILDING, SHREVEPORT, LOUISIANA

are entitled to remove the action from the State Court under the provisions of Section 1443 of Title 28 of the United States Code.

b) That said petition fails to state facts sufficient to give this Honorable Court jurisdiction of this action;

c) That said petition to remove fails to state facts showing that petitioners were denied or cannot enforce in the judicial tribunals of the State of Louisiana any rights secured to them by any law providing for the equal civil rights of citizens of the United States or of all persons within the jurisdiction of the United States within the provisions in purview of Section 1443 of Title 28 of the United States Code;

d) That said petition for removal involves no dispute or controversy within the jurisdiction of this Honorable Court.

WHEREFORE, Respondent prays that this Court remand this cause to the Second Judicial District Court of Bienville Parish, Louisiana.

/s/ Fred L. Jackson
FRED L. JACKSON - DISTRICT ATTORNEY
416 East Main Street
Homer, Louisiana

Filed May 28, 1965
Alton L. Curtis, Clerk
U. S. District Court
Western District of Louisiana

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SIDNEY YOUNG, COURT REPORTER. 311 FEDERAL BUILDING. SHREVEPORT, LOUISIANA

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

SHREVEPORT DIVISION

STATE OF LOUISIANA

NO. 17,281

Versus

CRIMINAL

GLENN RAY PAGGETT and
TOM JEFFERSON FLOWERS

Transcript of proceedings on Motion to Remand filed by defendants, before the Honorable Ben C. Dawkins, Jr., United States District Judge, at Shreveport, Louisiana, on July 14, 1965.

APPEARANCES:

FRED L. JACKSON, District Attorney, and HAL HENDERSON, Assistant District Attorney, Bienville Parish, Louisiana, on behalf of the Plaintiff;

FAITH A. SEIDENBERG and JOHN M. BURNETT, Attorneys for Defendants.

---oOo---

SIDNEY YOUNG, COURT REPORTER, 311 FEDERAL BUILDING, SHREVEPORT, LOUISIANA

THE COURT: The Court has before it this morning the matter of Glenn Ray Paggett and Tom Jefferson Flowers who have removed from the Second Judicial District Court at Bienville Parish a criminal prosecution pending in that parish.

The purpose of this hearing is not to determine the guilt or innocence of the accused but to simply decide whether or not a fair trial could be had in the State Court.

MR. BURNETT: If it please the Court, I might offer a motion to enroll as counsel for Mr. Glenn Ray Paggett and Mr. Tom Jefferson Flowers signed by Mr. Stone enrolling Mrs. Seidenberg and myself.

THE COURT: Both of you will be enrolled for the purpose of this case.

I take it the burden of proof rests with the moving parties. Therefore, you will proceed first.

MR. BURNETT: May we offer an order excluding the witnesses except for Mr. Flowers, one of the moving parties?

THE COURT: Yes.

Call the witnesses.

(Whereupon at this point the witnesses were called by the Marshal and sworn by the Clerk.)

SIDNEY YOUNG, COURT REPORTER, 311 FEDERAL BUILDING, SHREVEPORT, LOUISIANA

THE COURT: Gentlemen, during the trial of this matter and until it is concluded you will be excluded from the Court Room except when called to give your testimony. Do not discuss the case among yourselves or with anyone else except the attorneys in the case. If you do talk to them, be sure no other witness can overhear what is being said.

You may retire to the witness room.

MR. JACKSON: If the Court please, at this time I would like to enroll Mr. Hal Henderson, Attorney on behalf of the State.

THE COURT: All right. You may proceed.

TOM JEFFERSON FLOWERS

called as a witness on behalf of the movants, being first duly sworn by the Clerk, testified as follows:

DIRECT EXAMINATION

BY MRS. SEIDENBERG:

Q Will you state your name and address for the Court?

A My name is Tom Jefferson Flowers. I live at Route 1, Box 306, Jonesboro, Louisiana.

Q What do you do, Mr. Flowers?

SIDNEY YOUNG, COURT REPORTER, 311 FEDERAL BUILDING, SHREVEPORT, LOUISIANA

A I shine shows three or four days out of the week and on the week-end.

Q Is that the only job you have?

A Yes, ma'am.

Q How old are you?

A 18.

Q How far did you go in school?

A Eleven years of school.

Q Did there come a time around the 26th of April, 1965 when you decided to drive to Homer from Jonesboro?

A That's right.

Q Who was going to drive with you?

A Glenn Ray Paggett was in his father's car and I was in my father's car.

Q Who was in your car with you?

A I had six fellows with me beside myself.

Q You remember their names?

A Leon Russell, Melvin Poland, Ira Taylor, Willie Mitchell, Terry Glenn Ford and Charles Edward Andrews.

Q What time did you start out for Homer, approximately?

A It was around twelve noon.

Q Why were you going to drive there?

A The fellows got out of school when the bell sounded for the last class and I was on my way home and they

SIDNEY YOUNG, COURT REPORTER, 311 FEDERAL BUILDING, SHREVEPORT, LOUISIANA

asked me if I could take them to Homer and I said, "Yes". They said, "Would you charge me anything?" I said, "Pay the gas."

Q Do you know why they were going to Homer?

A They were marching up there and they asked me if I could drive them up there.

Q Do you know why they were marching?

A No, I don't.

Q About what time did you arrive in Arcadia?

A About 12:30.

Q When you arrived at the outskirts of Arcadia, did you see any police at that time -- State or city?

A Outside the city?

Q Yes.

A I got across Interstate 20 on this street -- I don't know the name of it -- and there was a city cop there.

Q When you left Jonesboro were there any police following you at that time?

A Sheriff Lowe at Jonesboro followed us.

Q He followed you from where?

A He followed me to the end of the road which go to Pine Grove.

Q About how far was that?

A Maybe a mile.

SIDNEY YOUNG, COURT REPORTER, 311 FEDERAL BUILDING, SHREVEPORT, LOUISIANA

Q Did he stop you?

A No, he didn't stop me.

Q When you were picked up by the police as you came in Arcadia -- I mean when you were followed -- were you at that time stopped?

A Yes. When we got in town there was three trucks coming out at the red light and the State Trooper was sitting with his red light on and I made a left turn and went on to the colored folks school and I made another left turn and stopped and he was behind me.

Q Why did you stop?

A I stopped to pull off the road and let him go ahead. He didn't. He pulled in behind me.

Q What did he do then?

A He called me over to the car and asked me for the driver's license and he said it was okay.

Q And he let you go?

A That's right.

Q Then where did you go?

A I was fixing to cross Interstate 20 and go home.

Q Were the two cars traveling together as far as Arcadia?

A Yes, sir. We split up in Arcadia.

Q Why did you split up?

A They told me to go one way and Glenn Ray went

SIDNEY YOUNG, COURT REPORTER, 311 FEDERAL BUILDING, SHREVEPORT, LOUISIANA

the other way.

Q Why?

A I guess to keep the police off us or something.

Q Were you at that time worried about the police?

A No, I didn't think about it. I just saw Sheriff Lowe in Jonesboro and when I got in Arcadia there was a city cop and a State Trooper directing traffic.

Q At that time you got worried?

A Yes, sir. The trooper told me to make a left turn and I made a left turn.

Q You went back to your car and went toward Route 20?

A Yes, ma'am.

Q What happened then?

A When I got close to Interstate 20, Glenn Ray called us to the side to the road and there was a city or parish cop there.

Q You are talking about when you got stopped the second time?

A That's right.

Q Glenn Ray Paggett was pulled over to the side by the police?

A That's right.

Q Did you stop to talk to him or what happened?

A I was going to keep on going but the city cop

SIDNEY YOUNG, COURT REPORTER, 311 FEDERAL BUILDING, SHREVEPORT, LOUISIANA

signaled me to pull up behind Glenn Ray.

Q Did you do so?

A Yes, ma'am.

Q What happened then?

A The trooper pulled up behind me.

Q A state trooper was there?

A Yes, ma'am. He followed me from the colored folks school.

Q What happened then?

A I went up to Glenn Ray and I didn't understand what they were saying because I was in my car.

He told me to mash my brake light and I did and he said it wasn't red and he told me to go to the Court House and he told me I had a vehicle operating without a brake light. He told me I had a stolen license plate.

Q He did not say "stolen". He said a switched license plate?

A Yes, sir.

Q He said it was a switched license plate, and did he explain it?

A Well, the license plate on my father's car, it was the right license plate and I made a mistake on that.

Q This is what he said to you?

A Yes, ma'am.

Q Did he, in fact, ask you to do anything about

SIDNEY YOUNG, COURT REPORTER, 311 FEDERAL BUILDING, SHREVEPORT, LOUISIANA

the license plate?

A He told me to take it off the car.

Q Were you at that time charged with having false license plates?

A Yes, ma'am. That evening when daddy came up and he talked to the Sheriff and he told daddy it was a mistake and he got it correct.

Q The license plate was the correct license plate?

A Yes, ma'am.

Q What happened after you got to the police station?

A Well, he told us to get out and raise the hood and unlock the truck and I did and he searched through the car and got the number of the motor.

Q He searched inside the car and in the trunk?

A Yes, ma'am.

Q Then did he ask you to go inside?

A No, he didn't tell us to go inside. He told us to take the license plate off the car.

Q After you did that, what happened?

A We went inside.

Q What happened then?

A Glenn Ray and I was taken in an office by ourselves and the fellows riding with us, they put them in another office.

SIDNEY YOUNG, COURT REPORTER, 311 FEDERAL BUILDING, SHREVEPORT, LOUISIANA

Q What happened in the office you were in?

A He told me to put my hands against the wall and he taken everything out of my pocket. Then he told Glenn Ray to get against the wall, and first he pushed me, and I got against the wall and he got through with me and did the same thing with Glenn Ray.

He got his wallet and Glenn Ray had a straight razor in his pocket.

Q Did you have any weapons in your pocket?

A No, ma'am. I didn't have anything but keys and a lip chap stick and papers from the local board and my cigarettes and cigarette lighter.

Q Were you placed on bond?

A Yes, ma'am. My bond was $200.00.

Q You went to jail.

A That's right. Before I went to jail, he told me I could make a phone call and I called Jonesboro at the Gulf Station and told them what happened and he told me he couldn't go my bond and he said he would try to get somebody to make my bond and Mr. Blankenship came with my father and he made my bond.

Q When was that?

A That was April 26, the same day they locked me up.

Q Ultimately, what were you charged with?

SIDNEY YOUNG, COURT REPORTER, 311 FEDERAL BUILDING, SHREVEPORT, LOUISIANA

A Operating a vehicle without brake lights.

Q That was the only charge placed against you?

A That's right.

MRS. SEIDENBERG: That's all, Your Honor.

MR. JACKSON: I have no questions.

LEON RUSSELL

called as a witness on behalf of the movants, being first duly sworn by the Clerk, testified as follows:

DIRECT EXAMINATION

BY MRS. SEIDENBERG:

Q Would you state your name and address for the Court, please?

A My name is Leon Russell, Hodge, Louisiana, 18 years old.

Q What do you do for a living?

A I work part time.

Q What kind of work do you do?

A Roofing for Jonesboro Roofing & Sheel Metal.

Q Did there come a time about the 26th day of April when you decided to go to Homer?

A That's right.

Q Why did you want to go to Homer?

SIDNEY YOUNG, COURT REPORTER, 311 FEDERAL BUILDING, SHREVEPORT, LOUISIANA

A We were going up there to get a movement at Homer.

Q Did you meet on that day Tom Jefferson, the defendant in this case?

A I did.

Q About when did you meet him?

A Between 11:30 and 12:00.

Q Did you ask him to take you?

A Yes, I did.

Q Did he, in fact, say he would take you to Homer?

A He would take me.

Q About what time did you leave Jonesboro?

A I am not sure but it was between 11:30 and 12:00.

Q Did you go through Arcadia?

A We did.

Q Were there others in the car beside the two of you?

A There was.

Q How many?

A I would say about eight -- seven or eight. I am not sure.

Q When you arrived in or near Arcadia what happened?

A When we arrived in Arcadia there was a policeman's car parked just across the tracks.

Q Could you identify the policeman for us?

A No.

Q Was it a city police or parish?

A City police, and when we stopped for the red light after we passed the city police, after the light changed, we pulled up about two blocks and the State policeman was directing traffic. Three tank trucks were coming out and they gave us a signal to take a left and we started up and the city police turned off and followed Paggett's car and the State Police followed the car we was in to the Negro school and we pulled off the side of the road and some of the boys got out and were going to the store. The State policeman asked Mr. Flowers to come over to his car.

Q Did he go?

A He walked over.

Q Could you hear the conversation that took place?

A Yes, we could.

Q You recall what it was, generally?

A Not exactly, but I did understand him asking Mr. Flowers for his license and he showed him his license and he said he could go ahead. One of the fellows told the State policeman we were going to Homer and the State police-

SIDNEY YOUNG, COURT REPORTER, 311 FEDERAL BUILDING, SHREVEPORT, LOUISIANA

man told him --

MR. JACKSON: Your Honor, we object. We have been very lenient on hearsay.

THE COURT: Objection sustained. That would be hearsay.

BY MRS. SEIDENBERG:

Q Did Mr. Flowers then get back in the car?

A Mr. Flowers got back in the car and so did the fellows that were with him.

Q You all got back in the car and started off again?

A Yes, we did.

Q Where did you go then?

A We started toward Homer and just before we crossed Interstate 20 the city policeman stopped Mr. Paggett and he give us a signal to pull in behind him.

Q Did you pull in behind him?

A Mr. Flowers pulled in behind him.

Q The State policeman then asked you to get out of the car?

A He pulled in and walked past the car we were in and he asked Mr. Paggett something. We couldn't understand what he was saying and he walked back to Mr. Flowers and told him to step on his brakes, and he did, and he said, "You are under arrest for operating a motor vehicle without

brake lights."

Q Then did he take Mr. Paggett and Mr. Flowers to the police station, as far as you know?

A That's right.

Q What about the rest of you who were passengers?

A He told us to stand aside in a line and he searched the car.

Q Was that search made at the place where he stopped you or after you got to the police station?

A That was after we got to the police station.

Q Did you ride in the police car or Mr. Flowers' car?

A We rode in Mr. Flowers' car.

Q When you got to the police station you got out?

A That's right.

Q The policeman asked you to stand in line?

A That's right.

Q What did he do at that time?

A He told Mr. Flowers and Mr. Paggett to follow him in the Sheriff's office -- in an office back there, and he carried them in and a different office and he wouldn't let us go in.

Q You were outside?

A We was outside.

Q Did he question you?

SIDNEY YOUNG, COURT REPORTER, 311 FEDERAL BUILDING, SHREVEPORT, LOUISIANA

A He did. Sheriff Davis came back out and told us to straighten out in the line and asked us our names and where we were from and then he told us to go inside.

Q Did he tell you you were under arrest?

A No, he didn't.

Q At any time did he tell you you were under arrest?

A No.

Q You went inside and what happened then?

A He called us one at a time in his office and talked to us. When one was in the office he asked two men to search us down inside the office.

Q Were you, in fact, searched -- each of you were searched?

A That's right, we were.

Q How long did you remain at the police station?

A Between fifteen and thirty minutes.

Q After that period of time were you then released?

A We were. He told us to wait on the outside, so we stood out there for about five or ten minutes. The same city policeman that stopped Mr. Paggett's car came out and told us we can't stand outside the police station. One of the fellows asked if we could have somebody to pick us up and he said, "yes". He made the call and we left

SIDNEY YOUNG, COURT REPORTER, 311 FEDERAL BUILDING, SHREVEPORT, LOUISIANA

walking. We walked out of Bienville Parish and over in Lincoln Parish and caught a ride with a preacher coming in.

Q The people that were in the car and searched in the police station, were any of you charged with any crime at all?

A No.

Q None of you?

A No.

Q You are absolutely sure of that?

A Outside of Mr. Flowers and Mr. Paggett.

MRS. SEIDENBERG: That's all.

CROSS EXAMINATION

BY MR. JACKSON:

Q At the time when you were stopped, they were stopping all the cars along there, weren't they?

A They didn't stop every one. After he stopped us, there was still cars passing us.

Q They were directing traffic through the town, weren't they? Didn't you see them stop other cars besides yours?

A We were the only car coming along at the time outside of the three tank trucks.

Q They stopped Paggett's car?

A He cut off before we did. He cut off at

SIDNEY YOUNG, COURT REPORTER, 311 FEDERAL BUILDING, SHREVEPORT, LOUISIANA

another intersection.

Q You didn't see them stop any other car because you were the only car along there?

A That's right.

Q They were busy with you at the time when other cars passed?

A I would say they were.

MR. JACKSON: That's all I have.

NORA AMOS, JR.

called as a witness on behalf of the movants, being first duly sworn by the Clerk, testified as follows:

DIRECT EXAMINATION

BY MR. BURNETT:

Q Mr. Amos, will you tell us your age and occupation?

A I am 17 years old and I am a schoolboy.

Q What year in school are you?

A Senior.

Q Senior in high school?

A Yes, sir.

Q I am directing your attention to April 26 of

SIDNEY YOUNG, COURT REPORTER, 311 FEDERAL BUILDING, SHREVEPORT, LOUISIANA

this year. Were you involved in a cavalcade from Jonesboro to Homer?

A Yes, I was.

Q Will you tell the Court about what time you left Jonesboro to go to Homer?

A I guess it was about 12:30.

Q What was your purpose for going to Homer?

A We were going to check with Pamela Smith on some activities that were carried out at Homer.

Q What kind of activity?

A They were demonstrations.

Q Demonstrations for CORE?

A Yes.

MR. JACKSON: Your Honor, we object to leading.

THE COURT: Don't lead the witness, Mr. Burnett.

BY MR. BURNETT:

Q Will you tell the Court in what car you were riding?

A I was riding in the lead car with Mr. Paggett.

Q At the time you left Jonesboro did you have occasion to see any law enforcement officers of any kind?

A Yes, I did. Just as we started to cross the

SIDNEY YOUNG, COURT REPORTER, 311 FEDERAL BUILDING, SHREVEPORT, LOUISIANA

overpass leaving Arcadia we were pulled over by a State trooper and a local officer.

Q Did you see any other automobiles being pulled over at the same time?

A Not at the same time, but after we stopped another automobile stopped behind us.

Q What other automobile was that?

A That was the car driven by Mr. Tom Jefferson.

Q After you pulled over, would you tell the Court what took place?

A Mr. Paggett got out and the officer asked him for his driver's license and he showed it to him. He looked at it and asked him for his car registration and he looked in the glove compartment and said he left it home. He asked him what kind of work did he do and he said he hauled paper wood for his father, and he asked to see his hands and he said, "You look like a paper wood cutter."

After Mr. Flowers pulled behind us, I couldn't hear what was said, and he told us to follow him to the Court House.

Q When he got to the Court House what took place?

A We all got out of the car and stood on the sidewalk next to the Court House and the officer asked him to open the trunk and raise the hood and he checked the serial number. He remarked that the license plate was

SIDNEY YOUNG, COURT REPORTER, 311 FEDERAL BUILDING, SHREVEPORT, LOUISIANA

registered to a different car and both of them took it off.

Q Who told you to take it off?

A The officer told Mr. Paggett and Mr. Flowers to take the license plate off.

Q The license plates were off both cars?

A They weren't off exactly. I think he got a screwdriver from Mr. Flowers and took the plates off.

Q The license plates were taken and then what took place?

A We proceeded to go in the Court House and Mr. Davis met us at the door and he said, "We are not going to have any B.S. in Arcadia."

We was walking in the Court House two abreast and he said for us to walk single file and he went in the office first and an officer came out and started to search us all. When the first one went out, the next one came in. Mr. Flowers and Mr. Paggett were taken to another room and I didn't see them any more until Mr. Flowers came out to use the phone.

Q Were you ever advised you were under arrest?

A Yes, we were, at the place where we were pulled over.

Q What were you particularly arrested for?

A No car registration. That is what the officer said.

SIDNEY YOUNG, COURT REPORTER, 311 FEDERAL BUILDING, SHREVEPORT, LOUISIANA

Q Were you driving the car?

A No, I wasn't.

Q Was it your vehicle?

A No, it wasn't.

THE COURT: Was it you who was first under arrest or the driver of the car?

THE WITNESS: The driver of the car.

BY MR. BURNETT:

Q Were you advised at any other time you had been placed under arrest?

A No.

Q Were you ever booked for any offense?

A No, I wasn't.

Q After you were taken in the police station and searched, what took place?

A When my turn came I walked into the office of Mr. Davis and he asked my name and age and where was I from and where was I going and had I participated in CORE activities in Jackson Parish.

Q This is Sheriff Davis?

A Yes.

Q What did you answer the Sheriff to that?

A I told him, "Yes, I had participated." I sought of paused on the answer and he said, "If you have,

SIDNEY YOUNG, COURT REPORTER, 311 FEDERAL BUILDING, SHREVEPORT, LOUISIANA

say you have." And I told him, "I have."

Q Did you have any other conversation with Sheriff Davis regarding your CORE activities?

A No, there wasn't.

Q After your group was searched and let out of the police station, then what took place?

A We went outside and stood up for a few minutes and an officer came out and asked Poland to go back in the Sheriff's office and we waited for him about five minutes and we were worried and he came out and the officer said we could go.

A suggestion was made that we go to the school and somebody said, "No, we better go home."

MR. JACKSON: Your Honor, we object to the hearsay.

BY MR. BURNETT:

Q Did someone suggest to go to the school and then what was said?

A Someone else said, "No, we better go home." And we proceeded to walk down the highway.

Q Did you see any police officers while you were walking on the highway?

A Yes, sir. A car driven by a police officer passed us and turned around and came back and drove slowly

SIDNEY YOUNG, COURT REPORTER, 311 FEDERAL BUILDING, SHREVEPORT, LOUISIANA

as we walked out of town.

MR. BURNETT: I haven't any other questions.

MR. JACKSON: No questions.

MR. BURNETT: If the Court please, we have some other witnesses but they will just be corroborative of the witnesses that have already testified.

THE COURT: Would you be willing to stipulate the other witnesses will testify substantially the same?

MR. JACKSON: We will stipulate Charles Flowers will testify the same as Tom Flowers.

MR. BURNETT: We have no further witnesses.

MR. JACKSON: Your Honor, I am willing to put on testimony in this case but it seems to me there has been no testimony at all in connection with the main issue in the case, that is, the statute depriving them of due process of law or they cannot get a fair trial in the Second Judicial District Court -- it seems to me that they have certainly failed to discharge the burden of proof.

I think it will be taking up the time of the Court to put the witnesses on the stand.

THE COURT: The Court in conducting this hearing today is following the ruling of the Fifth Circuit Court of Appeals in a case decided on June 22, 1965, Number 21655, entitled Willie Peacock, et al., versus the City

SIDNEY YOUNG, COURT REPORTER, 311 FEDERAL BUILDING, SHREVEPORT, LOUISIANA

of Greenwood, Mississippi.

In that case the Court indicated that there should be an evidentiary hearing to determine whether or not a fair trial could be held in the State Court on pending State charges where there was an effort to remove the case to the Federal Court.

We quite agree with you, Mr. Jackson, that so far there has been no showing whatever that a fair trial cannot be had. The record is completely devoid of any evidence to the effect that a fair trial could not be had on these two misdemeanor charges before either Judge Brown or Judge Dougherty. However, because of the fact that a full hearing is indicated by the Peacock case, I think it will be well for you to put your witnesses on and develop the case fully.

J. ROY CASKEY

called as a witness on behalf of the respondent, being first duly sworn by the Clerk, testified as follows:

DIRECT EXAMINATION

BY MR. JACKSON:

Q Mr. Caskey, what is your occupation, sir?

A I am an attorney at law.

SIDNEY YOUNG, COURT REPORTER, 311 FEDERAL BUILDING, SHREVEPORT, LOUISIANA

Q How long have you been an attorney?

A 26 years.

Q Are you duly licensed to practice law in the State of Louisiana?

A I am.

Q And you have been so licensed for 26 years?

A I was licensed in 1938 but I didn't start practicing immediately after I got my license. Since 1938 I have been licensed.

Q Before that time what did you do?

A I was Chief Deputy Clerk of the Second Judicial District Court in Bienville Parish.

Q How long did you serve in that capacity?

A 15 years.

Q Mr. Caskey, in all the years you have been Chief Deputy Clerk at the Court House in Bienville Parish and since you have been a practicing attorney have you seen many trials?

A Hundreds of them.

Q Concerning negro and white people?

A I have. As Deputy Clerk I handled all the Court work for fifteen years. I did all the Court work and observed many trials during that period of time.

Q Since you have been a practicing attorney at the bar, have you represented a great number of people, both

SIDNEY YOUNG, COURT REPORTER, 311 FEDERAL BUILDING, SHREVEPORT, LOUISIANA

Negro and white?

A I have.

Q During those years, Mr. Caskey, have you any reason to believe that a colored person could not obtain a fair trial in the Bienville Parish Court?

MR. SEIDENBERG: I object to that question.

THE COURT: On what ground?

MRS. SEIDENBERG: I object on the ground it calls for an opinion of the witness which he is not qualified to give.

THE COURT: I take it that Mr. Caskey is called as an expert?

MR. JACKSON: That's right.

THE COURT: He is entitled to express an opinion.

THE WITNESS: In my experience of 41 years in the Courts, particularly in Bienville Parish, I don't think I have seen an instance where a defendant, either white or colored, didn't receive a fair trial. That just doesn't happen in that Court and never has. The Courts, in my observation, have always leaned over backward to see the defendant gets a fair trial.

MRS. SEIDENBERG: I move that answer be stricken. Whether there ever has been a fair trial in that county is certainly beyond the reach of this witness.

SIDNEY YOUNG, COURT REPORTER, 311 FEDERAL BUILDING, SHREVEPORT, LOUISIANA

THE COURT: He is speaking only of the trial he has observed. His testimony will be limited to that.

I suppose from what he said he has seen hundreds and hundreds of trials; is that correct, Mr. Caskey?

THE WITNESS: Yes, sir.

MR. JACKSON: Tender the witness.

CROSS EXAMINATION

BY MR. BURNETT:

Q Mr. Caskey, in your position as Deputy Chief Clerk of Bienville Parish, are you familiar with the particular theories of law enforcement of the various law enforcement agencies in your parish?

A In a way, yes, sir.

Q In your opinion, do you feel if a police officer in a routine traffic check stopped two carloads of white people that they would have been taken to the Police Department and searched and turned out on the road with no more of the evidence which came in before, that they may have been an inoperative brake light and a routine traffic check?

A I don't know as I understand your question.

Q My question is, the evidence which came in

SIDNEY YOUNG, COURT REPORTER, 311 FEDERAL BUILDING, SHREVEPORT, LOUISIANA

that there was two carloads of Negroes going from Jonesboro to Homer. From Mr. Jackson's cross examination he indicated possibly this is a routine traffic check for officers going along Route 20. These two carloads of people were stopped, apparently, in this routine traffic check. The cars were searched. The people were directed to go to the police station where the occupants were also searched. The two drivers were booked and the occupants were told to go free.

A You mean whether it would have been white people that the same thing would happen?

Q Yes.

A Yes, I think so.

Q This is the standard procedure in Bienville Parish?

A Yes, sir.

MR. BURNETT: I have no further questions.

MR. JACKSON: That's all.

H. N. DAVIS

called as a witness on behalf of the respondent, being first duly sworn by the Clerk, testified as follows:

SIDNEY YOUNG, COURT REPORTER, 311 FEDERAL BUILDING, SHREVEPORT, LOUISIANA

DIRECT EXAMINATION

BY MR. JACKSON:

Q You are Sheriff H. N. Davis?

A Yes, sir.

Q Sheriff, you have been living in Bienville Parish how long?

A Since 1947.

Q How long have you been Sheriff of Bienville Parish?

A I took office in 1952.

Q Prior to that time where did you live?

A Arcadia.

Q What was your occupation at that time?

A In 1952 it was Sheriff. Before that I was with the Louisiana State Police.

Q During that time you have been dealing continuously with law enforcement work in Bienville Parish since 1947?

A Yes, sir.

Q During that time, Sheriff, I will ask you if you have any reason or seen any Courts act in any manner where a colored person could not get a fair trial in our Court?

A No, sir.

Q Have you seen any evidence at all of any dis-

crimination between a colored and white person as far as our Courts are concerned?

A No, sir.

Q As far as law enforcement, have you anything against the colored race?

A No, sir.

MR. JACKSON: I tender the witness.

CROSS EXAMINATION

BY MRS. SEIDENBERG:

Q Sheriff Davis, you have been Sheriff since 1952, you say?

A Yes, sir.

Q And with the State Police before that?

A Yes.

Q You have been a policeman for a long time?

A Yes, ma'am.

Q When you stop a car for a traffic violation is it your practice to search the contents of the car?

A It all depends on the circumstances of the arrest.

Q You generally find it necessary to get a warrant first, or not?

A Yes, ma'am.

Q When you searched the cars that you stopped of

SIDNEY YOUNG, COURT REPORTER, 311 FEDERAL BUILDING, SHREVEPORT, LOUISIANA

the defendants', did you have a warrant at that time? 31

A I hadn't stopped these people. I did not arrest these people.

Q What is your specific connection with this particular case?

A They were put in jail when they were arrested.

Q When was the first time you saw them?

A We take all the prisoners for the State Police when they are brought in. Any kind of violation is placed in our jail. April 26 is when they were placed in this jail. April 27 they were released on bond.

Q When you say "they", you are referring to whom?

A I don't even know their names. 32

Q May I see the paper you are holding?

A Yes. I think one of the names was Flowers. It is pretty hard to tell you exactly.

Q You say you think one of their names is Flowers?

A Yes.

Q This was typed up from what?

A This was taken off the jail register by the deputy who keeps up with the prison records.

Q He handed you this notation with two dates and no names?

A Yes.

Q You are here as a witness. Would you recognize

SIDNEY YOUNG, COURT REPORTER, 311 FEDERAL BUILDING, SHREVEPORT, LOUISIANA

either defendant if you were to see them?

A I believe possibly I might.

Q Were the other people in the car also placed in your jail?

A If I remember correctly there was about ten -- seven or eight, possibly -- as many as ten in those cars. There were only two kept.

Q How do you know there were seven or eight or ten in the cars?

A I happened to take the names of every one in that vehicle and it was left on my desk.

Q The names were left on your desk?

A Right.

Q Did you take them down?

A Yes, ma'am. I took some of them down.

Q You questioned these individuals?

A No, ma'am, just an identity was all.

Q Did you search them?

A No, ma'am.

Q Do you know whether they were searched?

A No, ma'am.

Q You do not know?

A No, ma'am.

Q You were not present at any search?

A No, ma'am.

SIDNEY YOUNG, COURT REPORTER, 311 FEDERAL BUILDING, SHREVEPORT, LOUISIANA

Q It is possible they were searched? 33

A I will say this: Every prisoner we are going to question is searched and I feel reasonably sure they were searched.

Q You have stated you had the names of about ten people?

A Every prisoner who goes in my jail, his name is laid on my desk.

Q But you had the names of eight or ten people. Were they all prisoners?

A No.

Q You do not know whether they were searched or not? 34

A No, ma'am, I couldn't tell you.

MRS. SEIDENBERG: That's all.

SIDNEY YOUNG, COURT REPORTER, 311 FEDERAL BUILDING, SHREVEPORT, LOUISIANA

R. W. WASSON

called as a witness on behalf of the respondent, being first duly sworn by the Clerk, testified as follows:

DIRECT EXAMINATION

BY MR. JACKSON:

Q You are Sheriff Wasson of Claiborne Parish?

A Yes, sir.

Q How long have you been Sheriff of Claiborne Parish?

A I am serving my third term.

Q For the record, what are the terms?

A Four year terms.

Q This is your third four year term?

A Right.

Q Claiborne Parish is located where with reference to Bienville Parish?

A North of it. Joins it on the North.

Q Would you say you have served approximately ten years?

A A little over nine years.

Q During that nine years that you have served as Sheriff of Claiborne Parish, have you worked closely with officers in Bienville Parish?

A I have.

Q For the record, it is true that the same Judges that serve Bienville Parish serve your Parish?

A That is correct.

Q During these nine years which you have worked on numerous cases with the Bienville Parish Sheriff's Office -- is that correct?

A I have.

SIDNEY YOUNG, COURT REPORTER, 311 FEDERAL BUILDING, SHREVEPORT, LOUISIANA

Q Have you seen any discrimination insofar as 35
black or white people are concerned in the Courts and by the officers of those parishes?

A I have not.

Q In your opinion, Sheriff, can a colored person get a fair trial in Claiborne or Bienville Parish which is served by the same Judges?

A Yes.

MR. JACKSON: We tender the witness.

CROSS EXAMINATION 36

BY MR. BURNETT:

Q Sheriff Wasson, you have been Sheriff nine or ten years?

A That's right.

Q What was your occupation prior to the time you became Sheriff?

A I was a cotton buyer.

Q In this nine or ten years has it been your practice from time to time to conduct routine traffic checks along the highways?

A I don't know that I ever have. Probably my deputies have.

Q Do you know what their routine practice is when they pull a car over on a routine check?

SIDNEY YOUNG, COURT REPORTER, 311 FEDERAL BUILDING, SHREVEPORT, LOUISIANA

A Check the driver's license, for one thing. 36

Q Is it standard operating procedure for them -- assuming the driver's license is available and they have no evidence of any other offense -- is it standard operating procedure to let them go down the highway?

A If there is no other evidence of any violation, certainly they let them go down the highway.

Q Suppose they were charged with having a defective tail-light, would they let them go down the highway after giving them the ticket?

A Not necessarily. If they couldn't post bond they might put them in jail. 37

Q Suppose in these cars there were five or six people. Would they be taken to the jail?

A Not if they hadn't violated a law, they wouldn't.

Q Driving in a car where there is a minor traffic violation, wouldn't subject them to go to jail?

A No, sir.

MR. BURNETT: No further questions.

PERCY E. BROWN

Called as a witness on behalf of the respondent, being first

SIDNEY YOUNG, COURT REPORTER, 311 FEDERAL BUILDING, SHREVEPORT, LOUISIANA

duly sworn by the Clerk, testified as follows: 37

DIRECT EXAMINATION

BY MR. JACKSON:

Q You are Judge of the Second Judicial District Court composed of the Parishes of Claiborne, Bienville, and Jackson?

A Yes, sir.

Q How long have you been one of the Judges of this District Court?

A Since January, 1954. 38

Q Prior to that time what was your occupation, Judge?

A I was a practicing attorney.

Q Where?

A At Arcadia.

Q Is that in Bienville Parish?

A Yes, sir.

THE COURT: Arcadia is your home?

THE WITNESS: Yes, sir.

BY MR. JACKSON:

Q How long did you practice law in Bienville Parish?

A I was admitted to the bar in 1920 and I

SIDNEY YOUNG, COURT REPORTER, 311 FEDERAL BUILDING, SHREVEPORT, LOUISIANA

practiced there continuously in my home town, which was 38
the parish seat.

Q Until you were elected Judge in 1954?

A That is correct.

Q Judge, during all those years as a practicing attorney you represented both the colored and white people of the parish?

A Yes.

Q Would you say that there was discrimination in our Courts during that time between colored and white people?

A I will say this: On all occasions I have seen 39
to it that the colored people receive the same fair treatment in the Courts as the other people.

Q Everyone you represented, some of them were on the losing side?

A Oh, yes.

Q Since you have been Judge, is there any reason why a colored person could not get a fair and impartial trial in the Courts of the Second Judicial District Court?

A I know of no reason why he couldn't.

MR. JACKSON: We tender the witness.

MRS. SEIDENBERG: No questions, Your Honor.

THE COURT: Judge Brown, if Glenn Ray Paggett and Tom Jefferson Flowers were brought before you, one charged with driving a car with defective stop lights

SIDNEY YOUNG, COURT REPORTER, 311 FEDERAL BUILDING, SHREVEPORT, LOUISIANA

and the other charged with carrying a concealed weapon, would there be any reason why you could not give these two men the same fair and equal treatment that you would as if they were white people? 39

THE WITNESS: No reason why I could not do it.

THE COURT: Would you do so?

THE WITNESS: Yes, sir.

THE COURT: If the evidence disclosed there was an illegal arrest or illegal search and seizure, would you hestitate to enforce the Constitutional privileges of these people? 40

THE WITNESS: I would not hestitate.

THE COURT: Have you in the past thrown out cases where there have been illegal searches and seizures or illegal arrests?

THE WITNESS: I believe I have. I can't think of them right now. We haven't had any pleas of that kind in our Court. Where I thought the charge was illegal, I have on many occasions disposed of it by dismissing it.

THE COURT: Do you know of any reason why you could not be entirely fair and impartial and just to these two people, Glenn Ray Paggert and Tom Jefferson Flowers, if and whey they are brought before you for trial?

THE WITNESS: I know of no reason why.

SIDNEY YOUNG, COURT REPORTER, 311 FEDERAL BUILDING, SHREVEPORT, LOUISIANA

THE COURT: Would you be? 40

THE WITNESS: I would be.

THE COURT: You took an oath when you became Judge to be completely fair to all persons whether they be black or white or some other color -- all persons -- all American citizens. Would you live up to that oath if you have these people brought before you?

THE WITNESS: I would.

THE COURT: You would uphold the Constitution of Louisiana and the Constitution of the United States in your handling of their cases?

THE WITNESS: I would, yes, sir. 41

THE COURT: Thank you, Judge.

FRANK M. DOUGHERTY

called as a witness on behalf of the respondent, being first duly sworn by the Clerk, testified as follows:

DIRECT EXAMINATION

BY MR. JACKSON:

Q Judge, you are the District Judge of the Second Judicial District Court of Louisiana?

A Yes, sir.

SIDNEY YOUNG, COURT REPORTER, 311 FEDERAL BUILDING, SHREVEPORT, LOUISIANA

Q Composed of what parishes?

A Claiborne, Bienville,and Jackson Parishes.

Q How long have you served as Judge of the Second Judicial District Court?

A I believe a little less than eight years.

Q Judge, is there any reason why a colored person could not receive an impartial and fair trial in the Second Judicial District Court?

A I do not know of any.

Q Have you tried to uphold your oath while you have been Judge in giving everyone a fair trial and looking on them all in the same light?

A I have.

Q Would you continue to do so, Judge?

A I would.

Q Judge, if these two defendants were charged with operating a motor vehicle with defective brake lights and carrying a concealed weapon, and they were colored people, would you give them the samefair and impartial trial as anyone else?

A I would do my best to.

Q If the State did not discharge the burden of proof and prove them guilty beyond a reasonable doubt would you acquit them?

A I would.

SIDNEY YOUNG, COURT REPORTER, 311 FEDERAL BUILDING, SHREVEPORT, LOUISIANA

Q Is there any reason that you know of why these two men could not receive a fair and impartial trial in Bienville Parish District Court? 42

A It is my opinion that they could get a fair trial.

Q If they were tried before you, you would uphold their Constitutional rights the same as anyone else?

A To the best of my ability, I would.

MR. JACKSON: Tender the witness.

CROSS EXAMINATION 43

BY MRS. SEIDENBERG:

Q Judge Dougherty, you have jury trials in your Court?

A We have on occasion, yes, ma'am.

Q When is the last occasion when there was a Negro juror, to your recollection?

A I do not remember.

THE COURT: That is really irrelevant, Mrs. Seidenberg. The charges here are misdemeanors which would be tried without a jury.

MRS. SEIDENBERG: That is correct, Your Honor, but I think the jury is simply allowed in felony cases and this is another kind of crime and it indicates the demeanor of the Court Room.

SIDNEY YOUNG, COURT REPORTER, 311 FEDERAL BUILDING, SHREVEPORT, LOUISIANA

THE COURT: You do have Negro jurors, do you not?

THE WITNESS: Yes, sir, they are called. I may say we have very few jury cases. I think in the eight years I have been Judge, I might have tried three or four. I believe three.

THE COURT: But there were Negroes on those jury lists?

THE WITNESS: I know there were on the last one. The others are so far back I am afraid to say that there were because I do not have a personal recollection. I am sure there were.

MRS. SEIDENBERG: No other questions.

MR. JACKSON: That's all, Judge.

SIDNEY YOUNG, COURT REPORTER, 311 FEDERAL BUILDING, SHREVEPORT, LOUISIANA

HUEY P. VERNON

called as a witness on behalf of the respondent, being first duly sworn by the Clerk, testified as follows:

DIRECT EXAMINATION

BY MR. JACKSON:

Q Your name is Huey P. Vernon?

A Yes, sir.

Q You are at the present time a duly qualified, commissioned and acting Deputy Sheriff of Bienville Parish?

A Yes, sir.

THE COURT: Let the record show that he is a member of the Negro race. Is that correct?

THE WITNESS: Yes, sir.

MRS. SEIDENBERG: In view of the fact that I don't believe the race was put down on anyone else, I would like to take exception to that.

THE COURT: The reason I am doing that is because he is a police officer and a member of the Sheriff's Department, according to the shoulder patch which he is wearing.

I would like for the record to show he is of the Negro race.

MRS. SEIDENBERG: I understand that. I only mention the fact that no other witness today has had his race in question.

THE COURT: The whole basis of the application to remove is one of race.

MRS. SEIDENBERG: That is correct, Your Honor, but it was not noted in the case of the witnesses for Mr. Paggett and Mr. Flowers. It was not noted as far as the other witnesses.

THE COURT: The witnesses for Mr. Paggett

SIDNEY YOUNG, COURT REPORTER, 311 FEDERAL BUILDING, SHREVEPORT, LOUISIANA

and Mr. Flowers were all members of the Negro race.

MRS. SEIDENBERG: That is correct, and it was not noted for the record at the time. I call attention to the fact that this witness is treated in a different manner.

THE COURT: I am not attempting to treat him in a different manner.

We will note for the record that all of the witnesses for Mr. Flowers and Mr. Paggett were of the Negro race. Of course, Mr. Caskey, the two Sheriffs and Judges Brown and Dougherty are members of the white race.

BY MR. JACKSON:

Q How long have you lived in Bienville Parish?

A 33 years.

Q During those thirty-three years and while you have been an officer, have you seen the officers or our Courts act in a discriminatory manner insofar as race -- whether a person is colored or white?

A No, sir,I haven't.

Q In your opinion and as an officer and citizen of the parish, can a colored person obtain a fair and impartial trial in the Courts of Bienville Parish?

A Yes, sir.

MR. JACKSON: We tender the witness.

SIDNEY YOUNG, COURT REPORTER, 311 FEDERAL BUILDING, SHREVEPORT, LOUISIANA

MR. BURNETT: No questions. 46

LEDRUE KING

called as a witness on behalf of the respondent, being first duly sworn by the Clerk, testified as follows:

DIRECT EXAMINATION

BY MR. JACKSON:

Q Ledrue, you are a duly qualified, commissioned and acting Deputy Sheriff of Bienville Parish? 47

A Yes, sir.

Q Are you a member of the colored race?

A Yes, sir.

Q How long have you lived in Bienville Parish?

A I have lived in Bienville Parish 42 years.

Q Is that how old you are?

A Yes, sir.

Q Ledrue, during the period you have been living in Bienville Parish, which has been all your life, would you say a colored person could obtain a fair and impartial trial in the Courts of our Parish the same as any white people?

A I believe so, yes, sir.

Q Ledrue, have you seen any evidence, as an

SIDNEY YOUNG, COURT REPORTER, 311 FEDERAL BUILDING, SHREVEPORT, LOUISIANA

officer or citizen, whereby the members of the colored race couldn't obtain a fair trial?

A No, sir.

MR. JACKSON: Tender the witness.

CROSS EXAMINATION

BY MRS. SEIDENBERG:

Q Sheriff King, how long have you known the prosecuting attorney?

A I don't know whether I know him or not.

Q You say you don't know whether you know him or not?

A Yes, ma'am.

Q I notice he continually called you by your first name. You have no objection to that?

A No, ma'am, I do not.

Q You consider it a common practice for the South? Would you consider that a fair statement? Isn't that a normal practice for a Court Room down there?

A As long as he called me and I understand what he wants, I figure it is all right.

Q You have been in other Court procedures, I take it?

A No, ma'am.

Q Have you ever been in a Court Room before?

SIDNEY YOUNG, COURT REPORTER, 311 FEDERAL BUILDING, SHREVEPORT, LOUISIANA

A Yes, ma'am. 48

Q Are you aware of the fact that white witnesses are called by their last name?

MR. JACKSON: If Your Honor please, that is not always true. I call many white witnesses by their first name.

THE COURT: I agree with you. Especially in rural Courts I have seen witnesses called by their first name, last name, Mr., Mrs., or Miss or whatever it might be. There is a degree of informality which you might not understand.

MRS. SEIDENBERG: I might not, in view of the 49
fact that I notice all the white witnesses are called by their last names and, of course, this is not a rural Court.

I have no further questions.

MR. JACKSON: That's all.

We have no further witnesses?

THE COURT: Any rebuttal?

MRS. SEIDENBERG: No rebuttal.

THE COURT: The Court is forced to rule that the removing parties have totally and utterly failed to prove in the slightest any of the allegations of their removal complaint, namely, to the effect that a fair and impartial trial could not be obtained by Glenn Ray Paggett and Tom Jefferson Flowers in the Second Judicial District

SIDNEY YOUNG, COURT REPORTER, 311 FEDERAL BUILDING, SHREVEPORT, LOUISIANA

Court of Bienville Parish, Louisiana.

On the contrary, the evidence shows without dispute that such a fair trial could be obtained and would be obtained and that all Constitutional rights and privileges of the accused persons would be upheld.

Under these circumstances, there is no alternative on the part of this Court except to declare the removal petition to be frivolous, without merit, and the motion to remand filed by the State of Louisiana through Mr. Jackson as District Attorney is granted.

We might comment in passing that the time of this Court has been wasted for an hour and a half now with a matter that is absolutely groundless and we do not appreciate that in the least.

Is there anything further anybody wishes to present?

MR. BURNETT: We have nothing further.

THE COURT: Court is adjourned.

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SIDNEY YOUNG, COURT REPORTER, 311 FEDERAL BUILDING, SHREVEPORT, LOUISIANA

CERTIFICATE

I, SIDNEY YOUNG, Official Reporter, United States District Court, Western District of Louisiana, do hereby certify that the above and foregoing 50 pages of typewritten matter contain a true and correct reporting and transcription of the proceedings had at the time and place as herein before set out on Page 1 hereof.

IN WITNESS WHEREOF I have hereunto affixed my signature at Shreveport, Louisiana, on this the 6th day of August, 1965.

/s/ Sidney Young
Sidney Young
Official Reporter
U.S. District Court
Western District of Louisiana

Filed August 6, 1965
Alton L. Curtis, Clerk
U. S. District Court
Western District of Louisiana

---oOo---

SIDNEY YOUNG, COURT REPORTER, 311 FEDERAL BUILDING, SHREVEPORT, LOUISIANA

(TITLE OMITTED)

NO. 17,281

NOTICE OF APPEAL

The defendants named in the above-numbered removed criminal cases hereby appeal to the United States Court of Appeals for the Fifth Circuit from the order of this Court, Honorable Ben C. Dawkins, Jr., Chief Judge, on July 14, 1965, remanding these causes to the Second Judicial District Court of Bienville Parish, Louisiana.

Counsels for Defendants:

Faith A. Seidenberg
217 A. State Tower Building
Syracuse, New York

John M. Burnett
146 Grant
Manteca, California

Alvin J. Bronstein
603 North Farish Street
Jackson, Mississippi

Jesse Stone, Jr.
854½ Texas Avenue
Shreveport, Louisiana

Dated July 16, 1965

/s/ Faith A. Seidenberg
Counsel for Defendants

/s/ Jesse Stone, Jr.
Counsel for Defendants

Filed July 22, 1965
Alton L. Curtis, Clerk
U. S. District Court
Western District of Louisiana

SIDNEY YOUNG, COURT REPORTER, 311 FEDERAL BUILDING, SHREVEPORT, LOUISIANA

(TITLE OMITTED)

NO. 17,281

MOTION FOR STAY PENDING APPEAL

Defendants - Petitioners, by their undersigned counsel, hereby move the Court to stay its order of remand entered in the above styled case, pending appeal of the Court's order of remand entered in the case to the United States Court of Appeals for the Fifth Circuit, and would show unto the court the following:

1. On July 14, 1965, the Court entered an Order remanding defendants - petitioners' cases to the Second Judicial District Court of Bienville Parish, Louisiana.

2. The jurisdiction of the United States District Court was invoked under 28 U.S.C. § 1443 (1958) in a petition seeking removal from the state court which was filed on May 20, 1965.

3. Petitioners filed a notice of appeal of the Court's order of remand to the United States Court of Appeals for the Fifth Circuit on July 22, 1965.

4. Unless the remand order is stayed forthwith, defendants - petitioners will suffer irreparable

SIDNEY YOUNG, COURT REPORTER, 311 FEDERAL BUILDING, SHREVEPORT, LOUISIANA

injury. Prosecution in the state courts serves no legitimate state concern if the removal is proper. It does (a) take defendants - petitioners to trial in a forum where Congress has directed they not be tried, a forum where by their allegations they cannot effectively enforce their federal constitutional and statutory rights, (b) subject them to the restraints of the state criminal process during the very period when their right to federal removal is being tested, (c) potentially moot the question of the propriety of the removal, and (d) thus punish them for exercising, and inhibit the exercise in the future of, their First, Fourth, Fifth, and Fourteenth Amendment freedoms.

WHEREFORE, defendants - petitioners pray the court to stay its order of remand entered in their case pending disposition on appeal of the case by the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted,

/s/ Jesse Stone, Jr.

Jesse Stone, Jr.
854½ Texas Avenue
Shreveport, Louisiana

Of Counsel

Alvin J. Bronstein
603 North Farish Street
Jackson, Mississippi

Faith Seidenberg
217 A. State Tower Building
Syracuse, New York

SIDNEY YOUNG, COURT REPORTER, 311 FEDERAL BUILDING, SHREVEPORT, LOUISIANA

John M. Burnett
146 Grant
Manteca, California

ORDER

The order of remand entered in the above-styled cause on the 14th day of July, 1965, is hereby stayed pending disposition on appeal of State of Louisiana vs. Glenn Ray Paggett and Tom Jefferson Flowers, Number 17281, to the United States Court of Appeals for the Fifth Circuit.

ORDERED, this 29th day of July, 1965.

/s/ Ben C. Dawkins, Jr.
UNITED STATES DISTRICT JUDGE

Filed July 29, 1965
Alton L. Curtis, Clerk
U. S. District Court
Western District of Louisiana

---oOo---

SIDNEY YOUNG, COURT REPORTER, 311 FEDERAL BUILDING, SHREVEPORT, LOUISIANA

(TITLE OMITTED)

NO. 17,281

DESIGNATION OF CONTENTS OF RECORDS ON APPEAL

Pursuant to Rule 75(a) of the Federal Rules of Civil Procedure, Petitioners, through undersigned counsel, Hereby designate for inclusion in the RECORD ON APPEAL to the United States Court of Appeals for the 5th Circuit, as per NOTICE OF APPEAL filed July 22, 1965, the complete Record of all proceedings and evidence in this action.

/s/ Jesse N. Stone, Jr.
Jesse N. Stone, Jr.
854½ Texas Avenue
Shreveport, Louisiana

of Counsel:

Alvin J. Bronstein
603 North Farish Street
Jackson, Mississippi

Filed August 23, 1965
Alton L. Curtis, Clerk
U. S. District Court
Western District of Louisiana

---oOo---

SIDNEY YOUNG, COURT REPORTER, 311 FEDERAL BUILDING, SHREVEPORT, LOUISIANA

(TITLE OMITTED)

NO. 17,281

MOTION TO EXTEND TIME WITHIN WHICH TO FILE THE RECORD ON APPEAL.

TO THE HONORABLE, THE UNITED STATES DISTRICT COURT IN AND FOR THE WESTERN DISTRICT OF LOUISIANA, SHREVEPORT DIVISION:

NOW INTO COURT, through undersigned counsel, come Glen Ray Paggett and Tom Jefferson Flowers petitioners herein, and move for an extension of ninety (90) days from July 22, 1965, the date on which the Notice of Appeal was filed in this case, within which to file the record on appeal, because the Reporter who will make up the record on appeal for the Clerk, on account of the press of accumulated prior business, will be unable to complete the transcript of appeal and file the same within forty (40) days from said date as required by Rule 73(g) of the Federal Rules of Civil Procedure.

Signed at Shreveport, Louisiana, this 23rd day of August, 1965.

/s/ Jesse N. Stone, Jr.
Jesse N. Stone, Jr.
854½ Texas Avenue
Shreveport, Louisiana

of Counsel:

Alvin J. Bronstein
603 North Farish Street
Jackson, Mississippi

SIDNEY YOUNG, COURT REPORTER, 311 FEDERAL BUILDING, SHREVEPORT, LOUISIANA

SIDNEY YOUNG, COURT REPORTER, 311 FEDERAL BUILDING, SHREVEPORT, LOUISIANA

O R D E R

The foregoing motion being considered:

IT IS ORDERED that Glen Ray Paggett and Tom Jefferson Flowers, be and they are hereby granted an extention of (90) days from the 22 day of July, 1965, within which to file the record on appeal with the United States Circuit Court of Appeals for the Fifth Circuit.

Thus Done and Signed at Shreveport, Louisiana, this 24th day of August 1965

/s/ Ben C. Dawkins, Jr.
UNITED STATES DISTRICT JUDGE

Filed August 24, 1965
Alton L. Curtis, Clerk
U. S. District Court
Western District of Louisiana

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
This is to certify that the above and foregoing contained on this and preceding 1 page is a true and correct copy of the original.

August 25, 1965
ALTON L. CURTIS, CLERK

BY/s/ Bernadine R. Scorsone
Deputy Clerk

---oOo---

January 18, 1965

Faith Seidemberg, Esq.
217A State Tower Building
Syracuse, New York

Dear Faith:

I am a little confused at the moment as to the handling of the Flowers & Paggett matter. Did I understand you correctly to say that you could prepare the papers? Because last week Harris David in New Orleans was somewhat concerned about the whole matter.

With best regards,

Sincerely,

CR/cs

CARL RACHLIN
General Counsel

UNITED STATES DISTRICT COURT

OFFICE OF THE CLERK
WESTERN DISTRICT OF LOUISIANA

P. O. BOX 106
SHREVEPORT, LA. 71102

October 8, 1965.

Mr. Edward W. Wadsworth, Clerk
United States Court of Appeals
Room 408 - 400 Royal Street
New Orleans 16, Louisiana

Dear Mr. Wadsworth: IN RE: Criminal No. 17,281-S
State of Louisiana vs.
Glenn Ray Paggett, et al

Pursuant to Rule 23 of the Rules of your Court and in accordance with Rule 75(g) FRCP and Rule 39(b)(1) FRCrP; we enclose to you herewith the entire record in the above captioned case and a certified copy of the docket entries.

Your attention is called to the fact that appellants ~~HAVE NOT~~ filed a bond for costs on appeal as required by Rule 73(c) of the Federal Rules of Civil Procedure. Counsel for Appellants take the position that they are not required to pay this court's filing fee or to post bond and cite as authority therefor Judge Wright's Decision in Lefton vs. City of Hattiesburg, 333 F. 2d 280 (June 5, 1964).

Copy of this letter is being sent to all counsel of record.

Printed copies of this record on appeal are being mailed to your office by Mr. Sidney Young, United States Court Reporter.

Very truly yours,

ALTON L. CURTIS, CLERK

By Bernadine L. Scarsone
Deputy Clerk

bls
encls.
cc: Counsel of Record

COLLINS, DOUGLAS & ELIE
ATTORNEYS & COUNSELLORS AT LAW
201 Douglass Life Insurance Building
2211 Dryades Street
New Orleans, Louisiana 70113

October 15, 1965

Robert F. Collins
Nils R. Douglas
Lolis E. Elie

TELEPHONE
523-5197

OCT 18 1965

Mr. Carl Rachlin, Esq.
38 Park Row
New York, New York

Re: Paggett and Flowers
vs. Louisiana

Dear Carl:

Enclosed is a notice from the 5th Circuit and a copy of the record on appeal. We would like to have Faith Seidenberg write the brief on appeal, if she has time. The brief is due November 11, 1965. Please let me know immediately if she is unable to write the brief.

Best wishes,

Harris

HARRIS DAVID

HD/ew

P.S. Carl, a stipulation I just received in Andrews v. City of Monroe calls for desegregation by September, 1968. Shouldn't it be September, 1967.

October 19, 1965

Faith Seidenberg, Esq.
217A State Tower Bldg.
Syracuse, New York

Dear Faith:

With all your current problems, we have just received word from Collins, Douglas & Elie that your case, Paggett & Flowers v. Louisiana, is getting ready for action. They sent me a copy of the record of appeal from the Fifth Circuit. You and John Burnett are listed as attorneys for defendant-appellants.

Please tell me whether you are too busy, as I suspect you are, to handle this and we shall, if you say so, obtain someone else to work on the brief. Do you think John Burnett would be interested in doing a draft of the brief which he can send to you for approval?

With best regards,

Sincerely,

CARL RACHLIN
General Counsel

CR/cs

cc: Harris David

COLLINS, DOUGLAS & ELIE
ATTORNEYS & COUNSELLORS AT LAW
201 Douglass Life Insurance Building
2211 Dryades Street
New Orleans, Louisiana 70113

December 1, 1965

Robert F. Collins
Nils R. Douglas
Louis E. Elie

Telephone
523-5197

Miss Betty Cooper
Clerk, United States
Court of Appeals
For The Fifth Circuit
400 Royal Street
New Orleans, Louisiana

Re: Louisiana v. Paggett
and Flowers
No. 22, 839

Dear Miss Cooper:

Due to the mounting volume of legal work, we have been unable to file our brief in the above case. We, therefore, request an extension of thirty days from this date in which to file the brief.

Thank you for your co-operation.

Respectfully yours,

COLLINS, DOUGLAS & ELIE

BY: _____
HARRIS DAVID

HD/ew

cc: Carl Rachlin
38 Park Row
New York, New York

Carl, this brief was due Nov. 11. If none is working on please send me the record and other papers so we can draft it. My file

copy to F.S.

COLLINS, DOUGLAS & ELIE

ATTORNEYS & COUNSELLORS AT LAW

201 Douglass Life Insurance Building

2211 Dryades Street

New Orleans, Louisiana 70113

December 22, 1965

Robert F. Collins
Nils R. Douglas
Lolis E. Elie

Telephone
523-5197

REC'D DEC 27 1965

Mr. Carl Rachlin
38 Park Row
New York, New York

Re: Louisiana v. Paggett
& Flowers

Dear Carl:

A reminder to John Burnet that the brief in this case is due January 3.

Best wishes,

Harris

HARRIS DAVID

HD/ew

December 27, 1965

John M. Burnett, Esq.
146 North Grant Street
Manteca, California

Dear John:

I have been asked by Harris David of Collins, Douglas & Elie, Esqs., 2209 Dryades Street, New Orleans, to remind you that the brief in Louisiana v. Paggett & Flowers is due January 3, 1966.

With best regards,

Sincerely,

CARL RACHLIN
General Counsel

CR/cs

JAN 3 1966

McFALL, BURNETT & MARTIN
ATTORNEYS AT LAW
146 NORTH GRANT STREET
MANTECA, CALIFORNIA 95336

JOHN J. McFALL
JOHN M. BURNETT
DUANE MARTIN

TELEPHONE
TALBOT 3-3109

December 30, 1965

VIA AIR MAIL

Mr. Carl Rachlin
General Counsel
Congress of Racial Equality
38 Park Row
New York 38, New York

Re: Louisiana v. Flowers & Paggett

Dear Carl:

We have previously been advised that the briefs must be in by January 3, 1966. I thought that possibly Faith Seidenberg would be preparing the briefs. I told her that my schedule was such that I wouldn't be able to do any work on them; although, I might be able to help out in the reply brief.

I think, as matters stand now, I won't be able to do anything within the next 60 days.

Best regards,

John M. Burnett

JMB:zo

MARCUSH, BENNY MAX VS. CIVIL SERVICE COMMISSION of ALAMEDA, CALIFORNIA 1965-1967
FIRING of A SOCIAL WORKER FOR REFUSAL TO COMPLY TO DEMANDS of CSC)

Box 41
Folder 22

...ersity Of Wisconsin

Please Retain Original Order

Sdraper - WO-4-6500 COPY

Susan Conway

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

FILED
Dist. Court of Appeal - First Dist.
MAY 8 1 1966
LAWRENCE B. ELKINGTON, Clerk
By _____ Deputy

BENNY MAX PARRISH,

Plaintiff and Appellant,

vs.

THE CIVIL SERVICE COMMISSION OF THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA, et al.,

Defendants and Respondents.

1 Civil 22556

This appeal from a judgment denying appellant B. M. Parrish's petition for a writ of mandamus for reinstatement as Social Worker II in Alameda County after his discharge for insubordination, raises questions of first impression concerning the propriety and constitutionality of an order directing appellant's participation in an operation to investigate welfare frauds. Respondents include the County of Alameda (hereafter county) and its Civil Service Commission, Board of Supervisors, Department of Welfare (hereafter department) and the director thereof, Harold B. Kehoe (hereafter director).

The basic facts are not in dispute.[1] On November 20, 1962, the board of supervisors unanimously adopted a resolution

1 Respondents argue that no constitutional issues are presented and that our sole function is to determine whether the administrative findings are supported by substantial evidence. However, like the court below, we will determine the matter on the merits. Where constitutional issues are involved, we must make an independent examination of the facts and law (Rescue Army v. Municipal Court, 28 Cal.2d 460; Ker v. California, 10 L.Ed.2d 726, 728).

Ed. Spaeth

requesting the county welfare director to conduct a series of unscheduled visits to welfare families similar to "operation weekend" in Kern County, where a large number of welfare frauds had been discovered in this manner.

The social workers of the Family Service Division were told on January 3 or 4 by the assistant director that the first set of unscheduled visits would be made between 6:30 and 10:30 a.m. on Sunday, January 13, 1963, and that the main purpose of this visit would be to look for absent parents or unauthorized males in the homes of ANC (Aid to Needy Children) recipients. The workers were instructed to select both "suspect" cases and random cases from their case load and to exclude those cases which had already been referred to the department's fraud investigation unit. A "suspect" case was one where the recipient's eligibility had not been redetermined for a period of about six months, or where the worker had some grounds for concluding that the eligibility needed further investigation. The random cases were included in order to make a better overall statistic relating to the county's total case load of about 6,000 recipient families.

At a subsequent meeting on Thursday, January 10, workers chosen to go that weekend were given precise instructions for the procedure to be followed by the supervisor of the department's fraud unit. This particular mass operation to determine eligibility was to be conducted by pairs of social workers: the worker known to the recipient would present and identify himself at the front door of the home of the recipient, indicate the exact purpose of the call

and request admission. If the request for entry was denied, the workers were directed not to enter the home. If the entry was allowed, they were directed to investigate in the same manner as they had on other occasions for the ANC program. — they had been

If the worker was admitted into the home, before proceeding into any other part of the house he was to ask permission to do so from the recipient. The second worker was to be stationed at the back door or other exit; if the worker at the front door was admitted, he was then to go through the house and let his partner in by the other exit. As in the past the department had withheld benefits from recipients who refused entry to members of the fraud unit, it was asked whether a refusal of entry on January 13 would automatically be a ground for discontinuance. The workers were instructed that if admission was not granted, benefits would not automatically be discontinued but the reason for denying admission would subsequently be investigated.

The workers were given these special instructions as this kind of operation was not among their ordinary routine duties which included supervising case loads of recipients of public assistance, conducting office and home interviews to determine continuing eligibility, recommending changes in aid, completing yearly renewals, determining eligibility for public assistance, completing applications and collecting and evaluating data and carrying continuing responsibility for their case load of recipients. The particular kind of investigation here in question was usually carried on by the fraud unit whose members were classified Social Worker III, "Welfare

Investigators." They worked in cooperation with the district attorney's office and investigated cases of suspected fraud referred by the case workers, who were classified as Social Workers II.

The primary purpose of the mass operation of January 13, 1963, was to identify and find the unauthorized males. The secondary purpose was to make the usual kind of administrative investigation relating to eligibility and to find out how much food there was in the house, the condition of the home and children, how the recipients were faring with their monthly checks, etc. As to the food and money, the workers were instructed to ask the recipient how much was left of the grant. Any unauthorized persons found in the home were to be identified and asked to explain their presence. If given permission to enter and permission to search, the workers were instructed to thoroughly search the premises, including looking in and under the beds.

Appellant, a Social Worker II, submitted a written refusal to participate in the mass visitations on the grounds that they were degrading, presumed the guilt of recipients, violated their rights of privacy, were not required under his job classification, and were inconsistent with his training and the rehabilitative goals of the ANC program. His services were terminated by the director for insubordination. The order of dismissal was ratified by the supervisors, upheld, after hearing, by the Civil Service Commission, and affirmed by the trial court on appellant's petition in mandamus for reinstatement.

Preliminarily, we deem it helpful to set forth the pertinent provisions of the Welfare and Institutions Code concerning the

ANC program (Welf. & Inst. Code, §1500, et seq.) which is coordinated with the federal program under which federal funds are made available (Merced County v. Dept. of Social Welfare, 148 Cal.App.2d 540, 541; Dept. of Mental Hygiene v. McGilvery, 50 Cal.2d 742). Section 1550.6[2] of the Welfare and Institutions Code provides: "The county is responsible for the eligibility of all recipients of aid under this chapter and shall as often as necessary redetermine eligibility of all recipients to receive aid."

A needy child is defined as a person under the age of 18 who has been deprived of parental support or care (Welf. & Inst. Code, §1500; 42 U.S.C.A., §606, subd. (a)). The federal act requires that the state agency in determining need shall take into consideration any other income and resources of a child claiming aid (42 U.S.C.A., §602, subd. (a)(7)). The provision most significant here is the portion of section 1508 of the Welfare and Institutions Code providing that if a needy child lives with his mother and stepfather or an adult male person assuming the role of spouse to the mother, although not legally married to her, the amount of the grant made shall be computed after consideration given to the income of such adult male person. Section 1511 sets forth the maximum amount of aid to be

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2 All of the above statutory references concern the provisions of the Welfare and Institutions Code at the time here relevant before the 1963 amendments (Stats. 1963, ch. 510). These amendments, however, did not substantially change the law but pursuant to a change made in federal law, existing groups of eligible children were redefined, children of unemployed parents were made eligible and the program was expanded to provide services as well as financial assistance to recipient families (tenBroek, California's Dual System of Family Law, Part II; 16 Stan. L.Rev., pp. 900, 952).

provided per family based on the number of children in the family; section 1511.5 that minimum basic standards of adequate care shall be distributed to the counties and shall be binding upon them. Pursuant to section 1550, the application for aid must be verified under oath or shall contain a written declaration made under penalty of perjury.

The county is responsible for the eligibility of all recipients of aid under the Aid to Needy Children program and shall as often as necessary redetermine eligibility of all recipients ($1550.6) and shall redetermine eligibility annually and at such time, or such intervals as necessary, require the family to complete a certificate containing the information necessary to establish the continuing eligibility and grant pursuant to section 103.3 of the Welfare and Institutions Code.[3] Section 1563 provides that any person signing such certificate who wilfully states therein any material matter which he knows to be false is guilty of a misdemeanor. Section 1575 provides:" "Any person other than a needy child, as defined in Section 1500, who willfully and knowingly receives or uses any part of an aid grant paid pursuant to this chapter for a purpose other than support of the needy children and the caretaker involved is guilty of a misdemeanor." Section 1577 provides: "Any person

3 Section 103.3 provides that the program be administered with "due consideration for the needs of applicants and the safeguarding of public funds." Subdivision (a) provides that any recipient for public assistance shall be informed as to the provisions of eligibility and his responsibility for reporting facts material to a correct determination of his eligibility of the grant.

COPY

other than a needy child, as defined in Section 1500, who willfully and knowingly, with the intent to deceive, makes a false statement or representation or knowingly fails to disclose a material fact to obtain aid, or who, knowing he is not entitled thereto, attempts to obtain aid or to continue to receive aid to which he is not entitled, or a larger amount than that to which he is legally entitled, is guilty of a misdemeanor." [4] The district attorney of the county is in charge of the enforcement of these provisions of the Welfare and Institutions Code (Welf. & Inst. Code, §§1570-1574).

"Operation weekend" was undertaken by the county pursuant to the above statutory provisions requiring a responsible and periodic redetermination of eligibility. Appellant does not challenge or question the county's duty to do so, but asserts that the method chosen -- a mass operation involving suspect and random cases -- is a general exploratory search without valid warrants, in violation of the Fourth and Fourteenth Amendments of the U. S. Constitution and section 19 of article I of the state Constitution, and is a denial of equal protection and due process.

We need not base our conclusion that search warrants were not required in this case on the ground, asserted by respondents, that the operation proposed was a mere administrative procedure to insure eligibility and could not be characterized a criminal investigation (Frank v. Maryland, 359 U.S. 360, 372-373; Abel v. United States,

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4 Subdivision (b) of section 103.3 provides, in part, that any recipient for public assistance "shall be responsible for reporting accurately and completely within his competence those facts required of him pursuant to subdivision (a) and to report promptly any changes in those facts."

362 U.S. 217, 230-234). Even if we assume the operation to be a criminal investigation, it is not illegal or unreasonable "for officers to seek interviews with suspects or witnesses or to call upon them at their homes for such purposes" (People v. Michael, 45 Cal.2d 751, 754; People v. Martin, 45 Cal.2d 755, 761). It is well established that where a person freely and voluntarily consents to a search of the premises under his control, his constitutional rights are not violated and any search or taking of evidence is not unreasonable (People v. Burke, 47 Cal.2d 45; People v. Fahrner, 213 Cal.App.2d 535, 536). Where there is a free and voluntary consent, it is not necessary for the respondents to otherwise justify an investigation or search (People v. McGhee, 196 Cal.App.2d 458; People v. McLean, 56 Cal.2d 660, 664).

Appellant relies on Johnson v. United States, 333 U.S. 10, Amos v. United States, 255 U.S. 313, and other cases involving the question of consent, holding that under the particular facts presented, there was no voluntary relinquishment of a known right but mere acquiescence to an express or implied assertion of authority. Applicable is the following comment with reference to the Johnson case and similar authorities made in People v. Michael, supra, page 753, and quoted with approval in People v. Burke, supra, page 49: "'Whether in a particular case an apparent consent was in fact voluntarily given or was in submission to an express or implied assertion of authority, is a question of fact to be determined in the light of all the circumstances.'"

Here, appellant and other social workers were repeatedly instructed that they were to carefully explain the purpose of their call and to seek permission or consent to search, with the clear implication that they were not to threaten automatic discontinuance of benefits or to use other coercive tactics. If appellant had failed to follow these instructions, he would likewise have been subject to disciplinary action. Although the facts here presented are unique and present many problems, we must assume for the purpose of this discussion that the instructions would have been followed and consent obtained.[5] Under these circumstances, we are not prepared to conclude, in the absence of a specific factual showing to the contrary, as in the Johnson case, that the ANC recipients had no alternative but to submit to a search and that it was not possible for their social workers, who strictly complied with orders, to obtain valid consent.[6] Certainly, there is no greater implied assertion of

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5 (See Effective Consent to Search and Seizure, 113 Univ. of Penn. L. Rev., 260; Administrative Inspections and the Fourth Amendment - A Rationale, 65 Colum. L.Rev., 288; Manwaring, California and the Fourth Amendment, 16 Stan. L.Rev., 318; Reich, Midnight Welfare Searches and the Social Security Act, 72 Yale L.J., 1347; Search and Seizure in the Supreme Court: Shadows on the Fourth Amendment, 28 Univ. of Chicago L. Rev., 664, 667-678).

6 None of the authorities cited by appellant deal with the question of consent which is properly presented in the brief of amicus curiae as pivotal in this case. (United States v. Silverman, 365 U.S. 505; Frank v. Maryland, 359 U.S. 360; Wolf v. Colorado, 338 U.S. 25; Mapp v. Ohio, 367 U.S. 643; Dist. of Columbia v. Little, 178 F.2d 13; Stanford v. Texas, 13 L.Ed.2d 431; Draper v. United States, 358 U.S. 307; Boyd v. United States, 116 U.S. 616; Marcus v. Search Warrant, 367 U.S. 717; Entick v. Carrington, 19 How. St. Tr. 1030 United States v. Jeffers, 342 U.S. 48; Carroll v. United States, 267 U.S. 132; Pearson v. United States, 150 F.2d 219; Smith v. State (Tenn. 1945) 184 S.W.2d 390).

there arguments should be saved for second point on which the search is violative of due proces or social security act.

authority here than in criminal cases which have approved consensual searches by identified police officers (Honig v. United States (8 Cir. 1953) 208 F.2d 916; People v. Michael, supra; People v. McGhee, supra). Also, until facts are adduced relating to the invasion of privacy of others in the home or involving consent by unauthorized persons, the principles enunciated in Tompkins v. Superior Court, 59 Cal.2d 65, and People v. Shelton, 60 Cal.2d 740, cited by amicus curiae, would not come into play.

A case in point is Honig v. United States, supra. There, one federal agent and two police officers went to the suspect's room. After being invited to enter, the officers informed the suspect of the complaint against him and asked for identification. When he answered that he had none, the officers asked if he would mind if they searched the room for identification and he told them to proceed. The court held this to be an effective consent.

We think that the opinion in Eaton v. Price, 364 U.S. 263, which involved an administrative search, is informative on the question of whether consent can be effective where there have been no prior suspicions or complaints concerning particular individuals or premises. In that case, there was an indiscriminate attempt to inspect the home in question even though there was no indication of any building code violations. Appellant was jailed pursuant to an Ohio ordinance for refusing to let the inspectors enter without a warrant. His conviction was affirmed because the Supreme Court was equally divided, Mr. Justice Stewart having taken no part in the decision. Mr. Justice Brennan, nevertheless, wrote an opinion

favoring reversal but conceded that such warrant need not be sought where the householder gives his consent.

Amicus curiae argue that a warrant should have been obtained before the recipient's consent to enter was requested but the cases they cite do not sustain such a contention. Bielicki v. Superior Court, 57 Cal.2d 602, was based on an arrest made after an officer had peeped through a pipe installed in a bathroom in an amusement park. The court found that defendant did not consent merely because he used a public place and held that evidence so obtained resulted from an unreasonable search. In People v. Cruz, 61 Cal.2d 861, the court held that an arrest having been made in defendant's automobile, the right to search incident to arrest and without a warrant did not extend to his home and consent to search defendant's suitcase could not be given by third parties living in the home. In Castaneda v. Superior Court, 59 Cal.2d 439, the officers took defendant from the place of his arrest to defendant's home and searched without a warrant. The court held the search at a different location was not incident to a lawful arrest. In Badillo v. Superior Court, 46 Cal.2d 269, the officers forced their way into the defendant's home without a search warrant and recovered a package of heroin thrown away by defendant. The court held the burden of proof that the evidence was legally obtained was on the prosecution. Kaufman v. Brown, 93 Cal. App.2d 508, and similar authorities, simply hold that in a civil action for false arrest, the allegation of arrest places on the defendant the burden of showing probable cause.

As to appellant's argument concerning the Fourth Amendment right of privacy, all of our above comments concerning consent apply

equally to a (waiver of that right) Thus, we cannot agree, in the absence of specific facts relating to married recipients, that the situation here presents a problem involving the penumbral right of privacy and repose upheld in Griswold v. Connecticut, 14 L.Ed.2d 510.

Appellant's argument that the investigation was invalid because it concerned a field pre-empted by state law is patently without merit as the statutes expressly made the county responsible for determining and redetermining eligibility (Welf. & Inst. Code, §§1500-1556).

We need not determine whether appellant is an employee or agent of the federal government as we have concluded that he was not required to participate in any violation of constitutional rights and thus no grounds existed which might subject him to criminal penalties under the Federal Civil Rights Act, 18 U.S.C.A., Title 18, section 2236, page 177.

Finally, we turn briefly to the reasonableness and propriety of the order directing appellant to participate in the mass operation of January 13. As we have indicated above, appellant was not required to participate in any unconstitutional activity and the order was made in the exercise of the county's duty to determine the continuing eligibility of recipients. As all workers in the Family Service Department were asked to participate in an operation of this kind on a weekend, the request was not unreasonable as to appellant. The job classification questionnaire submitted by appellant indicates that his duties might include evening and weekend hours.

Appellant complains that this operation was contrary to the rehabilitative goals of the ANC program. There are different

schools of thought on this subject. The pertinent sections of the Welfare and Institutions Code, cited above, indicate that the primary purpose of the program is to insure adequate food and clothing to the minor children and to afford them a good moral climate. Certainly, the public funds provided should not be syphoned off by unauthorized adult males residing in the home, regardless of the pleasures this may afford the mothers. We see nothing inherently wrong with making weekend eligibility calls which experience has demonstrated disclose widespread fraudulent misappropriation of public funds and the deprivation of the children for whose benefit the ANC program was instituted.

We can only conclude, in complete agreement with the court below, appellant was guilty of insubordination, defined as the wilful refusal to obey the reasonable orders of an employer (Wilbur v. Office of City Clerk, 143 Cal.App.2d 636, 642). As stated in Pranger v. Break, 186 Cal.App.2d 551 at 556: "'One employed in public service does not have a constitutional right to such employment and is subject to reasonable supervision and restriction by the authorized governmental body or officer to the end that proper discipline may be maintained, and that activities among the employees may not be allowed to disrupt or impair the public service. [Citations.] Because of this dominant public interest, the exercise of such control over the public employee is not only a right but is a duty, and in the discharge thereof a wide discretion thereof is allowed, which will not be disturbed until the point of illegality is reached.'"

No such point was reached here.

The judgment is affirmed.

Taylor, J.

WE CONCUR:

Shoemaker, P. J.

Agee, J.

S. F. No. 22139

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

PARRISH

v.

CIVIL SERVICE COMM.

FILED
SEP 15 1966
WILLIAM I. SULLIVAN, Clerk
By _____ S. F. Deputy.

Application of RUTH JACOBS for permission to file an amicus curiae brief in the above entitled cause is hereby granted.

A copy of the brief shall be served on all parties and the brief filed herein on or before September 29, 1966. Any Answer thereto may be served and filed on or before October 13, 1966.

_____
Chief Justice

65479-677 2-66 SM OSP

[First Draft]
[1966, August]

BRIEF OF THE CONGRESS OF RACIAL
EQUALITY, AMICUS CURIAE, ON BEHALF
APPELLANT, BENNY MAX PARRISH

INTEREST OF AMICUS[1]

2. The Congress of Racial Equality is a Civil Rights organization dedicated to insuring that the members of disadvantaged groups obtain the rights to which all citizens are entitled, to providing the means by which formerly voiceless and powerless people can take their rightful place in this society, to improving the conditions of life for the poor, to working to achieve a society based on brotherhood and equality. The resolutation of the issues in this case will be critical to the development of national welfare policies and to the maintenance of Fourth Amendment rights. In particular, the outcome of this case will be important in defining:

(1) the goals of welfare

(2) the relationship between welfare worker and reciipient

(3) this nation's attitude to the poor

(4) the power of government over recipients of disbursements in a [redacted] time of expanding public outlays

(5) the privacy of the home against state intrusion

1. SEDF for R.B. is

of recipient to welfare worker [illegible]

predominant, place; and thus the consent is ineffective.

ARGUMENTS

I. Raids at 6:30 in the morning in which requests to enter are made by the welfare worker who has gained a position of control and dominance by virtue of his dominion over the right to and amount of subsistence income, his role in initiating and testifying in proceedings which can lead to a loss of recipients welfare benefits or children, his role as friend and advisor, his intimate knowledge of recipients life, and his conscious establishment of a relation of respect and trust, these request made to a destitute, uneducated, resourceless welfare recipient to whom welfare is literally a matter of life and death and who has been led to believe that non-cooperation means loss of welfare disbursements results in a situation in which any consent gained is ineffective because:

(1) the transactions between welfare worker and recipient must be subject to the standards which govern the transactions between highly unequal parties, and these standards are not met,

(2) consent constitutes waiver of Fourth Amendment rights, waiver must be the intelligent relinguishment of a known right, and the welfare recipients were not only without knowledge of their right to refuse entry but had been indoctrinated and conditioned to believe they had a duty to permit entry,

(3) the historic standards for testing consent, namely that:

(a) consent must be voluntary, freely and intelligently given, without coercion, actual or implied

(b) consent implies choice

(c) consent is not submission to authority

(d) consent does not occur when entry is gained by hope fear, friendship, trust or confidence

are all violated.

[illegible] of recipient to welfare worker superior authority has at least some, if not a predominant, place; and thus the consent is ineffective.

Absolute economic dominance possessed by the welfare worker and total dependence on welfare of the recipient is but half the story, for California law provides the welfare worker with additional powers. Professor Jacobus Ten Broek in his article, "California's Dual System of Family Law: Its Origin, Development, and Present Status," 16 Stanford Law Review 900 at page 980 discusses the characteristics of the law of the poor: "public custodialization of welfare recipients; establishment of work projects and assignment of recipients to them; settlement and removal and liability-of-relatives provisions penally and administratively enforced; special surrender, adoption, and apprenticeship provisions for poor children; the stripping of poor parents of the right to custody and control of their children and the vesting of that rights in child-caring institutions and welfare workers; disestablishment of the linkage between the parental right to custody and the parental obligation of support..." As he concludes on page 978, "Family Law in California is not single, uniform and equal as to all families whatever their status, condition, or wealth. On the contrary, it is dual and distinguishes among families on the basis of poverty. It is therefore discriminatory as to the groups which are the principal victims of poverty: racial and ethnic minorities, the economically, socially, and educationally underprivileged children of broker home..." Furthermore, it is of the law of welfare and of the poor that Professor Reich in 74 Yale_____ has said, "Quote is to the effect that poor law and welfare law has hardly ever been tested or studied, and few people even know the law." If lawyers don't know the law of the poor and if welfare departments don't know the law, it is very certain that the recipients don't know it. Indeed all studies on the subject of law as seen by the poor report the same findings: the poor consider the law as the enemy, as an arbitrary and hostile system, in which they have no rights.

of recipient to welfare worker superior authority has at least some, if not a predominant, place; and thus the consent is ineffective.

under the guise of consent."

The welfare recipient sees himself at the mercy of the system, which as Professor Ten Broek points out is "discriminatory as to the groups which are the principal victims of poverty." To the welfare recipient the welfare worker is the spearhead and focus of power in this system. It is the welfare worker who gathers information, makes reports, takes action. The welfare worker determines eligibility, amount of disbursement, qualification for special disbursement. The welfare worker determines if a family member is fit for mandatory work projects. The welfare worker determines if residency requirements have been met. The welfare worker recommends the institutionalization of the recipients children; it is his testimoney that will generally determine the disposition of her children in legal proceedings. In a state where mere truancy from school can lead to long terms in youth colonies, maintaining the sympathy of the welfare worker is extremely important.

In addition to those powers which arise from absolute economic dependence and those that arise from the California law of the poor, the welfare routine and regimen further enhances the welfare worker's power and dominance. The welfare worker is privy to intimate details of the recipients life. He can extract the details of the recipients health, hygiene, and feeding habits, the unhappy facts of divorce, separation, abandonment, or illegitimacy, illnesses and past medical history, the parents methods of rearing children, the condition of home and family. The possession at all this knowledge of the most private and imtimate details of a person's life necessarily entails social dominance.

The recipient is also encouraged to go to the welfare worker for help. The worker leaves his name and office phone number, and expects the recipient to call in times of emergency. To many welfare recipients, without knowledge or the resources to search for benefits open to them, the welfare worker becomes

predominant, place; and thus the consent is ineffective.

under the guise of sedition."

their guide and advisor. He is the person who can tell them how to obtain medical or dental care, emergency housing service, any of the social services, public and private, of which they are often ignorant. He is often their link to the world and the person they must turn to in emergencies.

Furthermore, the welfare worker is instructed to gain the trust and confidence of the recipient. Bulletin No.624 of the State Department of Social Welfare instructed, "The case worker must establish the kind of relationship with the applicant which will enable him to understand and accept the program requirements and participate in establishing eligibility on a proper basis....Mutual respect and trust are essential to this relationship in the casework process."

In summary, the relationship between welfare worker and recipient is characterized by social and economic dominance and control. These arise from:

(1) total poverty and dependence of the recipient

(2) constant reiteration of the threat that the necessities of life depend on cooperation with the welfare worker

(3) the welfare worker's role in initiating and testifying in proceedings which can lead to loss of children, mandatory labor, loss of welafare benefits, criminal prosecution.

(4) the welfare worker's supervision of eligibility, his determination of the amount of the disbursement, and his control of and power to extract the most intimate details of the recipients life

(5) the welfare worker's role as guide and advisor,

(6) the welfare worker's establishment of a relationship of respect and trust.

Questions now presented are whether this relationship can be considered parties in equals or whether their transactions must be subject to the rules which generally govern transactions between unequal parties?

(2) the recipient who had never been told he could refuse entry, who indeed had been trained to think he had a duty to permit entry, waived his Fourth Amendment right to refuse entry when the constitutional definition

under the guise of sedition."

of waiver is the intelligent relinquishment of a known rights?

(3) the recipient who saw no option but to submit to entry or jeopardize welfare benefits effectively consented to the welfare worker's search when consent must be voluntary, freely and intelligently given, without coercion, actual or implied, not submission to authority, and not out of fear, friendship, or trust?

(1) TRANSACTIONS BETWEEN WELFARE WORKER AND RECIPIENT MUST BE SUBJECT TO THE STANDARDS WHICH GOVERN THE TRANSACTIONS BETWEEN HIGHLY UNEQUAL PARTIES; THUS TO BE APPROVED THE CONSENT MUST BE FAIR, WITH THE FULL KNOWLEDGE OF THE DISADVANATAGED PARTY IN POSSESSION OF ALL HIS POWERS, AND MUST BE FREE OF UNDUE INFLUENCE; THESE STANDARDS WERE NOT MET, AND THUS ANY ALLEGED CONSENT IS UTTERLY VOID.

To inquiries of why a citizen of the U.S. has a moral duty of loyalty and responsibility to the constitution and to democratic procedures, we cite basic propositions that the government is his government, that he has consented to its impositions, that he was involved as a free agent in its decisions, and thus is morally obligated to obey them. Ours is a consensual society. Our laws and duties are enacted by representative assemblies. Our highest officials are elected and subject to recall. The fifth, sixth, and fourteenth amendments establish rigid safeguards to protect against deprivations of liberty and property without consent. We stress that governments regardless of the will or consent of the people, governments imposed by force deserve no loyalty, but that governments by the consent of the governed deserve loyal and responsibility conduct by its citizens.

The concept of consent as the basis of loyalty and obligation is not restricted to ethereal political theory. But responsibility and obligation

grounded in consent is institutionalized in the body of Anglo-American law. It is in the fabric of day-to-day law. Thus the essence of obligation in the law of contracts, whose principles apply to nearly all transactions, is consent. Contracts in whose making duress, mistakes, fraud, insanity,,undue influence had a part are voidable. Civil and criminal liability with few exceptions is predicted on voluntariness. Legal effect follows consensual acts.

Because consent is so critical and because the integrity of the law would be terribly compromised if a fiction of consent were indulged [redacted] where no consent could take place, relationships were consent is unlikely are subject to special rules. When the relationship between parties is so unequal that one party is in no position not to consent, then the law requires of the advantaged party a higher standard of dealing. Law has evolved to regulate the conduct of parties where justice could not tolerate their treatment as equals.

For example, when sufficient confidence, trust, reliance, dependence, authority or influence are reposed in a relationship before transactions are approved the advantaged party must meet rigid standards,collectively designated the law of fiduciaries. Certain ~~technical~~ relations such as husband-wife, attorney-client, guardian-ward, administrator-heir are easily comprehended as fiduciary "But entirely apart from such instances, a fiduciary status may exist as a matter of fact." Bank of America v. Sanchez 3 Cal. App. 2nd 238, 243,38 p2d 787. Thus it is the circumstances of the relatio[n], the extent and depth of the relationship, not merely its designation, which calls forth the familiar fiduciary standards such as (1) the fiduciary can not use the relation to benefit his own interest, except with the full knowledge and consent of the other person, and (2) that the other person must be in possession of all his powers before he can be bound by that knowledge or consent, (3) transactions between parties in fiduciary relation will be jealously scrutinized, especially when the dominant party secures any under his

[redacted] predominant, place; and thus the consent is ineffective.

under the

influence, and (4) transactions between parties are presumptively fraudulent and void unless their fairness is established by clear and convincing proof. Corpus Juris Secundum, 36A, p. 388.

Besides fiduciary law, recognition of unequal relationships and necessity for protection of the disadvantaged party pervades the law. Thus in upholding minimum hours legislation the Supreme Court points to economic dominance and subsequent inequality in bargaining between the parties:" The proprietors of these establishments and their operatives do not stand upon and equality...The former naturally desire to obtain as much labor as possible from their employees. While the latter are often induced by the fear of discharge to conform to regulations which their judgment, fairly exercised, would pronounce to be detrimental to their health or strength. In other words the proprietors lay down the rules and the laborers are constrained to obey them. 169 V.S. 366, 369.

Further the common law has been historically alert to "undue influence" as a condition resulting in voidable transactions. Sir Frederick Pollack in Contracts, p.579 said, "The question to be decided in each case is whether the party was a free and voluntary agent. Any influence brought to bear on a party entering into an agreement, or consenting to a disposal of property, which, having regard to the age and capacity of the party, the nature of the transaction, and all the circumstances of the case, appears to have been such as to preclude the exercise of free and deliberate judgment, is considered by courts of equity to be undue influence, and is a ground for setting aside the act procured by its employment.

California courts have been particularly sensitive to undue influence; and in California the doctrine has been codified into S. 1575 of the Civil Law.

Undue influence consists of:

1. In the use by one in whom a confidence is reposed by another, or who holds a real or apparent authority over him, at such confidence or authority, for the purpose of obtaining an unfair advantage over him:

2. In taking an unfair advantage of another's weakness of mind;

3. In taking a grossly aggressive or unfair advantage of another's necessities or distress.

This law applies across the board to any transaction, and its protective shield extends to anyone who yielded to another person because seriously disadvantaged by weakness of mind or economic distress or because of confidence or authority reposed in the other.

In many cases California courts have ~~xxxxxxxx~~ scrutinized the relationship of the parties in order to determine the legal effect of a transaction. In SPARKS v. SPARKS 225 P2nd 238, 242 the court points out that "there are certain relations from the existence of which the law will infer special confidence, not only those of husband and wife, parent and child, counsel and client, etc. but in numerous cases where the facts proved will warrant the inference. In cancelling a deed in WEBB v. SAUNDERS, 181 82nd 43, 46 the court explains that the evidence "indicates that an intimate and confidential relationship between the parties existed, and that the parties should be bound by the rules prescribed on that subject" These rules require that the other party act "with full knowledge of the facts, and entire understanding of the ~~xxxxxxxxx~~

of recipient to welfare worker superior authority has at least some, if not a predominant, place; and thus the consent is ineffective.

under the guise of sedition."

transaction."

In CARR v. SACRAMENTO CLAY PRODUCTS (see S. 1575 Annotation) the court rescinded a release obtained b taking unfair advantage of financial distress.

California courts have also invalidated transactions where the relationship alone was such as to negative the possibility of free and voluntary choice. In GRIMES v. ALLEn 209 P2nd 651, 653 a contract between a police officer and his prisoner found to be free and voluntary by a lower court was declared voidable because it was considered as free and voluntary on the part of the prisoner as "some of the confessions that emanate from behind the Iron Curtain."

Now California courts are challenged again. The respondents claim a request to enter coupled with an explanation of the purpose of the visit are sufficient to insure effect consent by a welfare recipient to a welfare worker. In view of recent Supreme Court Decisions it is doubtful that [redacted] a bare explanation and [redacted] request without informing of the right to refuse [redacted] would be sufficient to gain effective waiver of rights even where the parties, for instance, a police officer and a standard alert citizen had a relationship of approximate equality. But even if these bare essentials, the explanation and request, are sufficient when the parties are approximate[redacted] equals, surely when as here the party giving up a right is totally dependent on the party requesting [redacted]

the waiver for the necessities of life, when the requesting party is chief advisor and has established a relation of respect and trust, when the party asked to permit entry knows she must cooperate with the party requesting entry or lose her family's subsistence, then this court must demand higher standards of conduct before the disadvantaged party can meaningfully consent to waiver of rights. We can at least demand that the disadvantaged party has full knowledge of the right to refuse entry. When the relationship of the parties is replete with influence, dominance, trust, and confidence courts demand, and should demand here, that the subservient party act with full knowledge of his rights.

[redacted]s.

[redacted] consent; it violates constitutional protection. Certainly, in the consent of recipient to welfare worker superior authority has at least some, if not a predominant, place; and thus the consent is ineffective.

under the guise of entitlement

If the integrity of the law is to be preservered, if we want to have a society where the strong are just and the weak protected, then we can't indulge in the fiction that the welfare worker and the recipient are in a position of equality and that transactions between them require no more safeguarding than transactions between equals. If in a totalitarian country the state sent an agent to homes at 6:30 in the morning searching for economic crimes against the state, if the people whose homes were searched were absolutely dependent on state granted welfare, if the agent who searched was the very man who controlled and could terminate the subsistence grant, if the necessities of life of the person searched depended on the nearly unpoliced and unsupervised good will of the investigator, would we be satisfied with the commissar's explanation that no human rights had been violated because the people had freely and voluntarily agreed to the entry, because permission to enter had been requested and of course everybody consented. It is impossible to evade the fact that entry to the recipients homes at 6:30 in the morning is gained through confidence and authority operating on people uneducated, untrained, without knowledge of their rights, in extreme economic distress. Even if there were no rigid law of waiver of constitutional rights, no rigid standards for determining effective consent, there is ample precedent in the common law and in S. 1575 of the California Civil Code to pronounce the alleged consent gained, the transaction between welfare worker and recipient, utterly void. The agreement between welfare worker and recipient is the product of authority, dominance, trust, weakness of mind, and economic distress. As in GRIMES v. ALLEN 209 P2nd 651, 653 where a contract between police officer and prisoner was declared voidable, the relationship of the parties compels the conclusion that consent by the recipient was as free and voluntary as "some of the confessions that emanate from behind the Iron Curtain."

(31)

SINCE ~~EFM~~ CONSENT CONSTITUTES WAIVER OF FOURTH AMENDMENT RIGHTS, SINCE WAIVER MUST BE THE INTELLIGENT RELINQUISHMENT OF A KNOWN RIGHT, AND SINCE THE WELFARE RECIPIENTS WERE NOT ONLY WITHOUT KNOWLEDGE OF THEIR RIGHT TO REFUSE ENTRY BUT HAD BEEN INDOCTRINATED AND CONDITIONED TO BELIEVE THEY HAD A DUTY TO PERMIT ENTRY, NO EFFECTIVE CONSENT OCCURRED.

(14)

Consent to an illegal search is a waiver of Fourth Amendment rights. It is very clear that Fourth Amendment rights may be waived. But the "Courts indulge every reasonable presumption against waiver of fundamental constitutional rights and we don't presume acquiesence in the loss of fundamental rights "Johnson v. Zerbst 304 U.S. 458, 464. "A waiver is ordinarily an intentional relinquishment or abandoment of a known right or privilege." Johnson v. Zerbst, 304 U.S. 458 "Waiver must be intelligent, and the determination depends on the particular facts and circumstances surrounding the case, including the background, experience, and conduct of the accused." Johnson v. Zerbst.

In the recent opinion in MIRANDA v. ARIZONA, _____U.S._____ the Supreme Court reaffirmed the principles enunciated in JOHNSON v. ZERBST: This court has always set high standards of proof for the waiver of constitutional rights. Johnson V. Zerbst, 304 U.S. 458" After iterating the duty to warn the accused of his right to remain silent,the Supreme Court states: "The defendant may waive effectuation of these rights provided that the waiver is made voluntarily, knowingly, and intelligently." Miranda v. Arizona _____U.S._____. Furthermore, the court emphasizes that the waiver must actually be intelligent, for in protecting these rights against unknowing and ~~i~~ unintelligent waiver the court notes, "A once stated warning delivered by those who will conduct the investigation cannot itself suffice to that end among those who most require knowledge of their rights." Miranda v. Arizona _____U.S.

The Welfare Department in Alameda County did not see the necessity for even a once stated warning. Never had the recipient been told that she could refuse entry. Yet time after time she had been told she must cooperate with the welfare worker and many times she has admitted him to her home. The person under police interrogation is merely ignorant of his rights. The welfare

recipient asked to permit entry has a further disadvantage; not only is the welfare recipient ignorant of his rights but he has also been indoctrinated by repeated messages and conditioned by repeated visits that he must permit entry. How could the welfare recipient "intelligently relinquish a human right" when he not only doesn't know of his right, but he has been trained to think that the welfare worker has the right, that he in fact has a duty to permit entry. It is gross understatement to say that the standard for waiver of a constitutional right, the intelligent relinquishment of a known right, has not been met. Consent to search is waiver of a constitutional right; there was no waiver and thus no constitutionally valid consent.

repeated

(31)

SINCE A CONSTITUTIONALLY EFFECTIVE CONSENT MUST BE FREE AND VOLUNTARY AND WITHOUT COERCION, AND SINCE WELFARE RECIPIENTS PERMIT ENTRY IN SUBMISSION TO AUTHORITY AND WITH THE REASONABLE AND INEVITABLE BELIEF THAT THEY MUST PERMIT ENTRY OR LOSE BENEFITS, NO EFFECTIVE CONSENT OCCURRED. (16)

Courts are suspicious of claims by authorities that the victim has consented to conduct which without the alleged consent would be a violation of his constitutional rights. [redacted]. This reluctance to find consent validating an otherwise unconstitutional search has resulted in a large body of case law in which courts have struggled to find standards to test the claim of consent. This sections is devoted to isolating the standards with which claims of consent are tested, and then applying these standars to this case to determine if constitutionally valid consents were obtainable.

I. CONSENT MUST BE VOLUNTARY, FREELY AND INTELLIGENTLY GIVEN, WITHOUT COERCION, ACTUAL OR IMPLIED

In Channel v,.U.S. 285 Fsd 217,219 "A search and seizure may be made without a search warrant if the individual freely and intelligently gives his unequivocal consent to the search uncontaminated by any and specific duress or coercion, actual or implied."

"In order for consent to constitute a waiver, the burden is on the government to show by clear and convincing evidence that such consent was unequivocal and and freely and intelligently given. specific Wai Lau, 215 F. Supp. 684, 686.

The rigid standards of voluntariness are illustrated in the Supreme Court decision in Amos v. U.S. 215 U.S. 313. Although the women victim had opened the door of her home silently and without protest the revenue officers announcement that they had come to search operated as "implied coercion." This case doesn't require subtle analysis to find coercion. The coercive nature of the entry is readily evident from

[redacted] authority has at least some, if not a predominant, place; and thus the consent is ineffective.

[redacted] under the guise of sedition."

A. the testimony of welfare workers, B. the dominant status of the welfare worker, C. the content of allegedly "uncoercive" request.

A. The Reichart Report stated,"Almost every investigator who has participated in such searches readily admits that most women allow them to enter only because they fear that if entry is denied, public assistance will be cut off." Benny Parrish testified that "recipients know that if they refuse to admit a worker, they probably will be discontinued, that recipients have been discontinued for this refusal." (RT 351:15-17) It is no mystery to those who actually search why they are permitted to enter.

B. The recipient has been bombarded with the threat that she must cooperate with the welfare worker, submit to visits, or lose welfare benefits. The recipient has never been told that this visit was an exception, that she could refuse entry without penalty (if that were true). To the welfare recipient the only reasonable assumption is that non-cooperation with this visit too carries the penalty of loss of benefits. To an absolutely destitute person without other means of staying alive the threat of loss of welfare is a powerful weapon. Indeed in Lynuum v. Illinois, 372, U.S. 528 a conviction was reversed on the grounds that a threat to cut off aid to dependant children benefits coerced the confession. The threat that coerced a confession in Lynuum must be seen to coerce permission to enter in Parrish.

But even if the recipient had been informed that refusal carried no immediate penalty, still the recipient must feel great pressure to admit the welfare worker. The resident who refuses entry to a police officer is turning away a person who will probably not be seen again and who has no continuing power over her life. Refusing entry to the welfare worker is a different matter: this person still has control over the necessities of her life. Even if he can't immediately retaliate, his good will is still important. His control of eligibility, the amount of disbursement, the disposition of additional sums, his power to initiate action to break up the family, the importance of his testimony in any of the numerous, frightening and [redacted] mysterious legal proceedings, and her need for his help still remain. To friendless,

[redacted] predominant, place; and thus the consent is ineffective.

under the guise of sedition."

destitute people refusal of entry to a person with such powers is unthinkable. The recipient has little freedom to turn away a person with such powers. The request at 6:30 A. M. by her welfare worker must have an imperative and coercive sound to the recipient, even if she were told that there was no immediate penalty for non-cooperation. [redacted]. But of course she wasn't told (nor could she be, for it is apparently not true), Welfare recipients had been repeatedly told that non-cooperation meant loss of benefits: many undoubtedly knew that, as stated by the District Court of Appeals "in the past the department had withheld benefits from recipients who refused entry to members of the fraud unit," But recipients had never been told that they could refuse entry. What else could they possibly think but that non-cooperation meant loss of benefits?

It was perfectly reasonable and unavoidable that recipients thought that refusal to permit entry would lead to termination of welfare benefits as well as jeopardy of the welfare worker's all important good will. It is no wonder that almost every investigator who participated in the raids believed that entry was allowed because of fear that benefits would be cut-off.

C. If the recipients were afraid that refusal could mean loss of benefits, then they would not have been reassured by questioning the worker about the consequences of refusal. As documented in the decision of the District Court of Appeals on p------, the "workers were instructed that if admission was not granted, benefits would not automatically be discontinued but the the reason for denying admission would subsequently be investigated." There is no question what subsequent investigation would mean to the welfare recipient; this subsequent investigation would not be undertaken with a view to increase welfare benefits. Special investigation could only result in a loss or decrease in subsistance money. No welfare recipient would miss the threat inherent in a subsequent investigation. It was a fist that knocked on each recipients door. As stated by the U.S. Supreme court in Haley v. Ohio 332 U.S. 596, 601, "we cannot give any weight to recitals which merely formalize constitutional requirements. Formulas of respect for constitutional safeguards cannot prevail

of recipient to welfare worker superior

predominant, place; and thus the consent is ineffective.

under the guise of sedition."

over the facts of life which contradict them. They may not become a cloak for inquisitorial practices and make an empty form of the due process of law for which free men fought and died to obtain."

The facts of life in this case are clear; welfare recipients open their doors in response to the threat of loss of life sustaining welfare benefits. Consent must be voluntary, freely and intelligently given, without coercion actual or implied. No constitutionally valid consent could have occurred.

2. CONSENT IMPLIES CHOICE, AN ALTERNATIVE TO CONSENTING

By definition, consent charaterizes a situation where refusal is an open possibility. If the victim has no choice, he can not be said to have consented. In Nelson v. U.S. 208 f2nd 505, the court found that a hardened gambler had yielded his notebook under compulsion of a Congressional committee. The court emphasized that consent did not occur, for Nelson had no choice he would be prosecuted for contempt if he refused and for gambling if he agreed. In TAKAHASHI in finding that the defendant did not waive his Fourth Amendment rights the court noted that in 1942 Japanese "could, with ill grace refuse the U.S.any evidence in their possession." "Reluctance upon their part would probably be interpreted as evidence of treason or at least trading with the enemy." The court recognized that the suspect had no choice. Regardless of how quickly and seemingly voluntarily he complied with the police request, his status as a Japanese American during World War 11 Put him at such a great disadvantage that even the most courteous request by police officers was coercive. The request contained an inherent threat. The court recognized that this Japanese-American who had conducted a successful business and was presumably capable and sophisticated was a member of a class who had no choice to consent to the suggestions of authorities.

The welfare recipient is also faced with this absence of choice. He sees no option- he can either permit entry or lose welfare benefits. Borrowing the words of the court in TAKAHASHI, the welfare recipient could, with ill grace, refuse his welfare worker permission to enber. Reluctance upon his part would probably be interpreted as evidence of a crime. It might have been that TAKAHASHI would not have

under the guise of sedition."

been punished for refusal to give up his papers. But the court recognized that this was the expectation of the defendant. The request was made in circumstances that foreclosed all choice. Similarly here the welfare recipient felt that he had no choice; he must comply or lose welfare benefits. Consent can have no meaning nor constitutional validity when granted in the absence of choice.

3. NO CONSENT OCCURS WHERE SUBMISSION TO AUTHORITY HAD ANY PLACE

Courts have been extremely sensitive to the relationship between the parties, and where the entry is obtained by the force of authority, then no consent was obtained. In JOHNSON where the police officer identified himself as "Lieutenant Belland" and said, "I want to talk to you a little bit," the court found that entry "demanded under color of office." The entry was granted in submission to authority rather than as an understanding and intentional waiver of a constitutional right. In Canida v. U.S. 250 F 2d 822, 825 the court makes very clear that entries in submission to authority won't result in loss of constitutional rights: Consents "in the obtaining of which the assertion of force and pressure or of superior authority had any place is violative of the constitutional protection. Especially is this the case in situations of this kind, involving such a disparity of position as that of the government agent and this humble defendant."

The Canida defendant was a woman, "timid and unadvised of her rights." The searcher was a federal agent whose apparent duty was investigating interstate transport of stolen property. But the disparity of position in Canida appears quite small when compared to the disparity in this case. The disadvantaged party here is absolutely destitute, undeducated, helpless; whatever index of capability chosen, whether it be financial, educational, social, political, the welfare recipient occupies rock bottom. Further the searcher here is the very person who controls the necessities of life, who has the power to break up her family, who acts a friend and advisor. It is hard to imagine a relationship in which the disparity of position is greater. Indeed the concept of consent is not fitting. The parties are situated such that entry is a mere reflex submission. Where superior authority had "any place" in the consent, it violates constitutional protection. Certainly, in the consent of recipient to welfare worker superior authority has at least some, if not a predominant, place; and thus the consent is ineffective.

(21)

4. THE CONSENT STANDARD IS SUBJECTIVE, AND THUS TAKES INTO ACCOUNT SOPHISTICATION, KNOWLEDGE, AND EXPERIENCE OF THE VICTIM

As in Canida where the "disparity of position" of the "humble defendant" was one factor which led to the denial of the claim of consent, courts examine closely the victim's capacity to waive his rights. Thus the standard of consent is subjective. Courts do not ask if objectively the police request was made in such a manner taht a "reasonable man" could understand and consent; the question is instead if this defendant, considering his knowledge, his experience, his position did consent.

In HONIG v. U.S. 208 F2d 916, cited by the Court of Appeals for the proposition that consent can validate illegal searches, the court found consent to the search, but justified this finding on the basis that the defendant had much experience and knowledge of law and a background of previous arrests. In Wai Lav v. U.S. 215 F. Supp. 684, 686 the court found no consent by a defendant who didn't "speak or understand the English language with any facility," citing as one reason that the burden of proving consent is, of course, heavier where it appears that the owner is illiterate or a foreigner who does not readily speak or understand the English language.

TAKANASHI, _____ furnishes another example of the courts taking into account the fears and knowledge of the victim, his state of mind, in determining if his acquiescence was effective consent. It amy be that punishment wouldn't have been an automatic consequence of refusal to give up records, yet the court realized that the defendant, a Japanese-American, in 1942 confronted by U.S. authorities felt he had no choice.

Similarly in this case the issue is not whether the welfare worker's receitals would have been adequate to gain consent from the reasonable man, but whether a free, voluntary consent without actual or implied coercion would be gained from a welfare recipient. The question is, does the welfare recipient, a person dependant on the welfare worker for the necessities of life, uneducated, often with little facility in English language, believing that continued benefits depended on cooperation with the welfare worker, permit entry freely and voluntarily without submission to authority or coercion,

under the guise of sedition."

Introduction for this - Waiver - search for illegal conduct. (22)

CAPS

1-Mass Raids at 6:30 A.M. without a glimmer of probable cause on a large class of people nearly randomly chosen duplicate the illegal conduct that the fourth amendment was intended to outlaw.

The Fourth Amendment reads:
The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

As is true of most constitutional standards, the Fourth Amendment in prohibiting "unreasonable searches and seizures" speaks in general terms and thus demands judicial interpretation But courts have encountered no difficulty in declaring some conduct, in particular the species of search the amendmnt was designed to outlaw, totally unreasonable.
In BOYD v. U.S. 116 U.S. 616, 624-625 the court stated:
In order to ascertain the nature of the proceedings intended by the Fourth Amendment to the Constitution under the terms "unreasonable searches and seizures it is only necessary to recall the contemporary or then recent history of the controversies on the subject, both in this country and in England. The practice had obtained in the colonies of issuing writs of assistance to the revenue officers, empowering them, in their discretion, to search suspected places for smuggled goods, which James Otis pronounced the worst instrument of arbitrary power, the most destructive of English liberty and fundamental principles of law that ever was found in an English lawbook; since they placed "the liberty of every man in the hands of petty officers"

In NUELSEIN v. D. of C. 73 App DC 85,87, 115 F2d 690, 692, the court says "Although the Fourth Amendment was written against the background of the general warrants in England and the writs of assistance in the American colonies", it "gives a protection wider than these abuses" and thus at least as wide. (4)

The characteristics of the general warrants and the writs of assistance can be gathered from the following three sources:
1-Virginia in 1776 in her declaration of right quoted in NUESLEIN v. D of C 115 F2d 690, 693 announced:
"X That general warrants, whereby any officer or messenger may be commanded to search suspected places without evidence of a fact committed, or to seize any persons or persons not named, or whose offense is not particularly described and supported by evidence, are grievous and oppressive, and ought not to be granted."

under the guise of sedition."

1. VA. Compiled Laws 1776-1803 (2ed 1814) p.2

2-The general warrant condemned in Entich v. Carrington 19 Howell's St. Tr. Col. 1029 issued in 1763 gave general authority to do what was necessary to apprehend the authors and printers of an acid commentary on a speech by the king.

(B)

3-A recent discussion of the Fourth Amendment in Stanford v. Texas 379 U.S. 476, 481 (1965) states:

Vivid in the memory of the newly independent Americans were those general warrants known as writs of assistance under which officers of the Crown had so bedeviled the Colonists. The hated writs of assistance had given customs officials blanket authority to search where they pleased for goods imported in violation of the British tax laws.

[redacted] The right which the Welfare Department assumes today, to go where they wish, without any showing of cause or application of warrant, to invade the privacy of a large group of people only justified by the vision of crime somewhere by somebody in this group nearly duplicates the writs of assistance. The general approach of the British to their colonials and the Welfare Department to its colonized recipients seems to be that as long as a crime is being committed by somebody in a class like importers, or printers, or welfare recipients the Crown may "place the liberty of every man in the hands of petty officers," swoop down, knock at any door without a shred of cause, trample rights of privacy, intimidate, frighten, "search under beds" [redacted]. Indeed these raids, which might have occurred immediately before the revolution, anachronisms in days of anxiety over hidden microphones and transistorized spies, may be more oppressive than the old English practice. The targets of the writs of assistance were primarily shops and storehouses and the raids were conducted with some suspicion, whereas today's welfare raiders exclusively attack homes and as recited in the lower court opinion, these raids were conducted, unbelievable as it may seem, "in order to make a better overall statistic." The British had little compulsion to gather statistics at 6:30 in the morning.

The sole difference between today's welfare raid and the writs of assistance is that the welfare raiders were instructed to request consent to enter. But in many cases the consent given could only be a result of coercion. More important, the essential vices of the 6:30 welfare raids and the writs of assistance are the same; they both mean intimidation, assertion of unbounded government authority, the arbitrary knock on the door, and trampling the privacy and security of the victim.

(C)

form if used by a government determined to suppress political [illegible] under the guise of sedition."

(31)

(28) Gelston, D.

The recent case of Lankford v. Gelstern decided June 23, 1966 by the U.S. Cercuit Court of Appeals for the Fourth Circuit, in which an injunction was issued to prohibit conducting of illegal mass searches, supports the conclusion that the possibility of consent can not legitimate deliberate mass raids without any cause. The police defendants in Lankford conducted over 300 searches in Baltimore at all hours of the day and night, primarily on the basis of uncorroborated, anonymous calls and tips. The trial disclosed variations in the police raids - some officers politely requested entry while others entered by force. Thepolice testified that officers who were to "gain admission" were instructed to explain their mission and purpose. The trial ~~disclosed variations in the police raids~~ court found "Few stated any objection to the entry; some were quite willing to have the premises searched..., while others acquiesced because of the show of force. "240 F. Supp. 550 (D. Md. 1965), 555, quoted on page 5 of the opinion of the Court of Appeals. Yet the Circuit Court did not find that the possibility of consent (and the consents found to have occurred in some cases) validated the police conduct. The order to the district court to grant an injunction did not state that the police could search without any cause as long as they [redacted] polite/and knock[redacted] The court didn't say that mass raids on homes without any cause are legitimate as long as [redacted] the formulas of consent/are uttered at every door. The order for injunction reads: "The case will be remanded for the entry of a decree enjoining the Police Department from conducting a search of any private house to effect the arrest of any person not known to reside therein, whether with or without an arrest warrant, where the belief that the person is on the premises is based only on an anonymous tip and hence without probable cause." In justifying the injunction and restraining the police, the court emphasizes precisely the disturbing ele-

form if used by a government determined to suppress political opposition [redacted] under the guise of sedition."

ments of this case: the invasion of privacy, the total absence of cause, the mass scale, and that all this was in effectuation of policy and plan.

Thus on p.11, in discussing the police practice Judge Sobeloff says, "This case reveals a series of the most flagrant invasions of privacy ever to come under the scrutiny of a federal court." "The parties seeking redress have committed no acts warranting violation of the privacy of their homes; there has never been any suspicion concerning them or their associations."

On p. 14 the court says, "These raids were not isolated instances undertaken by individual police officers. They were rather the effectuation of a plan conceived by high ranking officials. All members of the Police Department, from the commissioner down to the raw recruit, are expected to be familiar with the principle that if the police intend to conduct a search of a man's home for a suspect, they must,at least, have probable cause to believe that he is on the premises. The doctrine is not subtle; it touches the very heart of law enforcement practices, and has found expression in numerous judicial opinions. Its force could not have escaped the Commissioner and other members of the police hierarchy, yet the raids were carried on relentlessly for 19 days."

On p.17 the court continues, "After so vast a demonstation of disregard of private rights, the complainants are entitled to a clear response. While the immediate pressure of wholesale raids has been withdrawn, the practice of indescriminate searches of homes has been renounced only obliquely, if at all, and the danger of repetition has not been removed. The sense of impending crisis in police - community relations persists, and nothing would so directly ameliroate it as a judicial decree forbidding the practices complained of ."

The clear implication is that the police must have [redacted]

form if used by a government determined to suppress political opposition [redacted] under the guise of sedition."

some evidence before they have a right to disturb people and request searches. The gravamen of the illegality was not the lack of consent, not that the police didn't act politely and utter formulas at the door, but that these searches are in complete disregard of private rights, that they were indiscriminate and unjustified by a shred of cause, and that they were pursuant to deliberate plan. The conduct enjoined in Lankford, and the conduct of the Welfare Department in this case, is the conduct James Otis denounced in 1770 and which has been regularly denounced throughout our history. This assault on the Fourth Amendment must again be turned back. Accepting the Welfare Department's contention that the possibility of consent validates these mass raids means a return to pre-Fourth Amendment practice of arbitrary raids by petty goverment officers without cause or warrant on large numbers of homes to search for imagined and speculative violations. Many would lament the judicial repeal of the Fourth Amendment.

(9)

(27)

EXCEPTION TO THE FOURTH AMENDMENT MUST BE NARROWLY CONSTRUED, UNLESS THE EXCEPTION SWALLOW THE RULE

The two leading exceptions to the Fourth Amendment have been fashioned by judicial decision: (1) consent may validate an illegal search, (2) a search may be undertaken incident to an illegal arrest.

But these exceptions have been rigorously and narrowly construed. "It has been repeatedly decided that the amendments should receive a liberal construction, so as to prevent stealthy encroachment upon or gradual depreciation of the rights secured by them, by practice of court or by well-intentioned by mistakenly over-zealous executive officers. GOULED

how relevant

The exception to the Fourth Amendment that searches incident to a legal arrest may be undertaken without a warrant has received this very narrow construction. ~~extremely limiting construed. Thus, the authority of officer to search incident to arrest upon a valid warrant of arrest could not greater than that conferred by a search warrant issued upon proof and sufficiently describing the place to be searched, though the arrest was effected.~~ In U.S. v. Rabinowitz 339 U.S. 56 a search incident to an arrest of defendant's desk and file cabinets in his one room office was upheld, but only because "the place of the search was a business room to which the public including the officer was invited," the search did not extend beyond the room used for unlawful purposes," "the room was small and under the immediate and complete control of the respondent." Still Justice Frankfurter was of the opinion that a search warrant should have been obtained. "In plain English, the right to search incident to an arrest is merely one of those very narrow exceptions to the "guarantees and immunities which we had inherited from our English ancestors, and which had from time immemorial been

four Madison

then swallow the rule; police or any other authority could go anywhere, knock on any door as long as they uttered their litany of requests. This practice would be no "stealthy encroachment upon or gradual depreciation of the rights secured by the Fourth Amendment; the approval of this practice would be a massive attack on the Fourth Amendment rights of privacy and security. We urge that as "repeatedly decided," "the amendments should receive a liberal construction," and the "very narrow exceptions" kept narrow. Consent may be sufficient to legitimate an otherwise illegal search of one man's home, with the authorities bearing the burden of proof that "effective consent" was obtained. But we urge the court to rule that the consent exception must be narrowly construed and cannot be used to justify these early morning mass raids.

(30)

CONSENT OPERATES ONLY TO VALIDATE ILLEGAL ACTS WHICH INVADE AN INDIVIDUAL INTEREST BUT CONSENT CAN NOT VALIDATE THESE MASS RAIDS WHICH ATTACK COMMUNITY VALUES AND INTERESTS BY (1) ESTABLISHING A PRECEDENT WHICH PROMISES EXCESSIVE GOVERNMENT CONTROL AND SURVEILLANCE, AND (2) CREATING IN ITS IMMEDIATE VICTIMS THE ANTAGONISM AND HATRED THAT LEAD TO RIOT.

Private parties cannot license the commission of a crime. Thus a violation of state lawis a crime, and it does not lie within the discretion of the victim as to whether the violator shalll be punished. Stab;eton v Hasking 2i NE2nd 884 i77 Ohio St. 52. The consent of the victim does not purge violations of law of their character as a public wrong. When the interest attacked is community not merely private, and when the danger is general not just individual, then the illegal conduct cannot be legitemated by the immediate victim's consent

The basic policy of the Fourth Amendment is to secure to the citizen the right of privacy in his home. XXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

But courts have pointed out that the Fourth Amendment besides protecting individual interests also safeguards and maintains transcendant national interests. James Otis' denuciation of the general warrant, "the worst instrument of arbitrary power, the most destructive of English liberty, and the fundamental principles of law, that ever was found in in an English lawbook, because they placed the liberty of every man in the hands of every petty officer" reflects concern not only with individual interests, but the destructive effect of arbitrary power on the rule of law and on the security which is essential for free institutions. [redacted] Similar sentiments have been expressed throughout our constitutional history. [redacted]

(31)

...ons in Gouled v. U.S.

...255 US 303, 304 the Supreme Court noted,

it would not be possible to add to the emphasis with which the framers of the constitution and this court have declared the importance to political liberty and the welfare of our country of the due observance of the rights guaranteed under the Consitution by the two (Fourth and Fifth) Amendments. The effect of the decisions cited is: that such rights are declared to be indispensable to the full enjoyment of personal liberty, and private property; that they are to be regarded as of the very essence of constitutional liberty; and the guaranty of them is, as important and as imperative as are the guaranties of the other fundanebtal rights of the individual citizen.

In Johnson v US 333 US 10, 14 the court stated,

Crime, even in the privacy of one's own quarters, is, of course, of grave concern to society, and the allows such crime to be reached on proper showing. The right of officers to thrust themselves into a home is also a grave concern, not only to the individual but to a society which chooses to dwell in reasonable security and freedom from surveillance.

And Justice Jackson dissenting in Brinegar v US 338

US 160, 180 notes the effect of police state techniques.

Among deprivation of rights, none is so effective in cowing a population, crushing the spirit of the individual and putting terror into every heart. Uncontrolled search and seizure is one of the first and most effective weapons in the arsenal of every arbitrary government. And one need only briefly to have dwelt and worked among a people possessed many admirable qualities but deprived of their rights to know that the human personality deteriorates and dignity and self-reliance disappear where homes, persons and possessions are subject at any hour to unhearalded search and seizure by the police.

Thus courts have long recognized that the Fourth Amendment is vital to the maintenance not only of individual rights but of our free institutions. And that violating Foutth Amendment rights is a great threat "to a society wgich chooses to dwell in reasonable security and freedom from surveillance." The state is claiming the right to knoock at 6:30 a.m. on homes of recipients of disbursements without any showing of cause. What can be used against welfare recipients can be used against other groups. When one man's règhts are endangered, then every man is threatened, and this is particularly true when the illegality is pursuant to plan and policy. Government disbursements by means of welfare grants, subsidies, licenses, rent payments, poverty programs, loans, franchises, contracts are growing greatly. Any claim of the right to search by the person who distributes the largesse at any hour without a glimmer of cause threatens a great number of Americans with surveillance and control incompatible wjth the exercise of personal freedom. And courts have long recognized that an illegal police practice used against one group can be easily used against another. For instance in upsetting the conviction in US v Kirshenblatt 16 F2nd 202, 203, another Fourth Amendment case concerned with consent, the court states, "Nor should we forget that what seems fair enough against a squalid huckster of bad liquor may take on a very different form if used by a government determined to suppress political apposition under the guise of sedition."

(32)

If this conduct is approved, ~~every person~~ those who shares in our government's propserity will be subject ot the 6:30 invasion by just the person who dispenses the bounty. This is an unprecedented invasion of Fourth Amendment rights. It may be that consent can validate illegal searches of one home when the party searched voluntarily waives his own rights. But the possibility of gaining consent should not be allowed to legimate a practice that threatens most Americans . These raids strike at the security of all Americans and threaten the basis of our free institutions; consent by the immediate victims cannot diminish the danger nor dispel the illegality.

2. Arbitrary and illegal search and seizure not only erode personal and community security but also in degrading and terrifying its victims create resentment, desperation, and anarchy. The antagonism and destruction of confidence in authority engendered by these raids constitutes a great danger to society. This has been recognized in many opinions. "Nothing can destroy a government more quickly than its failure to observe its own laws, or worse, its disregard of the Charter of its own existence." MAPP v OHIO 376 US 643 659.

Justice Brandeis' classic dissent in OLMSTEAD V. US 277 US 438 485 describes the instructive effect of government illegality.

In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupously. Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by example. Crime is contagious. If the government becomes a lawbreaker, it breeds contempt for the law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the end justifies the means-to declare that that government may commit crimes in order to secure the conviction of a private criminal-would bring terrible retribution. Against that pernicious doctrine th this court should resolutely set its face.

Recently in LANKFORD V GELSTEN judge Sobeloff enjoined mass raids without probable cause partly because these raids have disastrous social consequences: "Baltimore City has escaped thus far the agony and brutalizing of the riots experienced in New York City, Los Angeles, Chicago and other urban centers. Co urts cannot shut their eyes to events that have been widely publicized throughout the nation and the world. Lack of respect for the police is conceded to be one of the factors generation violent outbursts in Negro communities .

The invasions so graphically depicted in this case "could" happen in prosperous suburban neighborhoods, but the innocent victims only know that wholesale raids to not happen elsewhere and did happen to them. Understandably they feek tgat such illegal treatment is reserved for those elements who the police believe cannot or will not challenge them. It is of the highest importance to community morale that the courts shall give firm and effective reassurance, especially to those who feel that they have been harrassed by reason of their color or their poverty." Thus the interest protected against illegal searches in landeford were not limited to the immediate victim, but also potential victims and the society that ultimately suffers when one group meets harassment. The court recognized that the victims don't staty quiet. The fear, distrust, and expectation can infect large segments of the community. And the ultimate consequence is anarchy and riot.

The Almeda County "operation bedcheck" undoubtedly subjected hundreds of people to illegality and indignity. If some victims deny entry — the welfare department contends, these welfare recipients are able to freely and voluntarily exercise their rights — then these people will have been surrounded at 6:30 in the morning, rudely awaken, subjected to annoying inconsiderate, disrespectful government behaviour without any shadow of cause or consent. It is direct government persecution. It is illegality by the representatives of the institutions that the victims are asked to trust and respect and give allegiance. It is one fine way of provoking hatred and riots. The governments is omnipresent teacher; disrespect and illegality will be answered in kind.

These raids go far beyond the invasion of mere individual rights. In permitting unprecedented government control add surveillance they threaten our free institutions and undermine the security of all citizens. Further they help produce the desperation and antagonism that brings cities into riot. The illegality and dangers of these raids are so grave that the raids cease to be invasion of individual rights. Thus the possibility of consent by the victims does not purge the raids of their unconstitutionality.

SUPREME COURT
STATE OF CALIFORNIA

----------x

BENNY MAX PARRISH,

Petitioner and Appellant,

-against-

THE CIVIL SERVICE COMMISSION OF THE COUNTY OF ALAMEDA, State of California,

Respondents.

----------x

BRIEF OF AMICUS CURIAE

INTEREST OF AMICUS CURIAE

The Congress of Racial Equality is a nationwide membership organization active in the field of race relations, most particularly the correction of wrongs suffered by minority groups.

The Congress of Racial Equality has a special interest in the issues presented on the appeal of the instant case. The knock-on-the-door in the middle of the night is the

harbinger of harm to minority groups. Often, ignorance, fear and futility compel the poor to accept actions by those in authority which would be vigorously challenged by the educated and well-to-do. Special conditions prevail when authority seeks to impose techniques of surveillance and search on the poor that are not otherwise imposed upon other segments of the community. As a result of administrative proceedings and litigation throughout the United States, CORE has acquired unique awareness of the pivotal issues in the instant case.

This brief will focus on the issues that have singular significance to the organization, to wit: The planned, calculated violation of the constitutional rights of some 400 families in Alameda County subsisting on Aid to Needy Children benefits. The favorable determination of this issue will re-affirm the privacy of the home from state intrusion and remove a significant and continuing restriction suffered by the poor.

STATEMENT

This brief is submitted in support of a petition by

Appellant for a hearing by the Supreme Court of the State of California after a decision by the District Court of Appeal, First Appellate District, Division Two, rendered on May 31, 1966.

Appellant seeks reinstatement as a permanently employed Social Worker II, Case Worker in the Aid to Needy Children Program in the Department of Welfare of the County of Alameda, State of California.

THE FACTS

Briefly stated, Appellant refused to obey the order of the Director of the Department of Welfare of the County of Alameda directing that Appellant participate in a mass, pre-dawn surprise search of the homes of beneficiaries under the ANC program. The unscheduled visits were to occur on SUNDAY, January 13, 1963 between 6:30 and 10:30 in the morning. The main purpose of "operation bed check" was to look for absent parents or unauthorized males on the premises. A secondary purpose was to determine continuing eligibility. Both purposes involved potential criminal prosecution and as stated in the opinion below, in the ordinary course,

involved referral to the District Attorney's office for prosecution.

The instructions to the welfare workers stated that two social workers were to appear at the home of the welfare recipient; the worker known to the recipient at the front door to request admittance and the other worker at the rear of the home to make observations.

Appellant refused to participate in the mass search for stated reasons in that, it was in his view degrading, presumed the guilt of recipients, violated right to privacy and were inconsistent with the rehabilitative goals of the ANC program.

Appellant was, thereupon, dismissed and commenced the instant mandamus proceeding for reinstatement.

POINT I

THE CONSTITUTIONAL MANDATE FOR "CONSENT TO WAIVE A CONSTITUTIONAL RIGHT" IS NOT SATISFIED IN THE INSTANT CASE.

An exploratory search by government employees under the conditions stated by the Director of the Welfare Department

absent specific suspicions of criminal acts on the part of the specific victims of the search is in direct conflict with the severe limitations of the Fourth Amendment of the United States Constitution mandating restrictions on unlawful search and seizure.

A general search directed at a mass of welfare recipients, indicated on the facts of the insant case, would be insufficient to satisfy the strict requisites for a warrant, since it obviously lacks specificity as to persons, places and probable cause that the suspects are comitting or have comitted a crime. Dumbra v. United States, 268 U.S. 345. In consequence of their inability to obtain a warrant, the Respondents justified a mass search on the defense of "consent".

The rationale of the opinion below and the defense of Respondents rests solely and simply on the presence of consent by the recipient to allow entry to the premises by the social worker. It is the view of the court below and the Respondents that petitioner was obligated to comply with an order to search the premises of a series of welfare beneficiaries by requesting "consent" for the sole purpose

of obtaining evidence of "fraud".

We respectfully dispute this rationale. We submit that the "consent" spoken of in the opinion below cannot operate to waive constitutional protections on the facts of the instant case.

The federal constitutional standards imposed upon the states are particularly strict and precise. There is a long history behind such standards that has been amplified and clarified in a variety of cases state and federal. In substance, the courts have taken the view that the standards for giving up a federal protection must be coincidental in degree with the value of the federal protection being given up.

In Johnson v. Zerbst, 304 U.S. 458, 464 the court stated:

> "Courts indulge every reasonable presumption against waiver of fundamental rights."

The critical standards employed by the courts in examining the operation of "consent" to waive a constitutional right are briefly stated as follows:

A. When consent is claimed by public authority, the burden of proof is upon the State to establish affirmatively

that there has been free and voluntary consent. Hubbard v. Tensely, 336 F.2d, 854; Badillo v. Superior Court, 46 Cal.2d, 269.

B. Consent must be uncontaminated by any form of duress or coercion, actual or implied, direct or indirect. Amos v. United States, 255 U.S. 313; Channel v. United States, 285 F.2d, 217; Judd v. United States, 190 F.2d, 649; Higgins v. United States, 209 F.2d, 819.

C. Consent to be given freely and intelligently must be unequivocal and specifically given as consent to search, not merely consent to enter. Robertson v. State of Texas, 375 S.W. 457.

D. Consent to be given freely and intelligently must not simply be "submission" to authority. Waldron v. United States, 219 F.2d, 37.

E. Finally, consent cannot be implied or flow simply from failure to challenge or argue with those in authority seeking such consent. Higgins v. United States, supra; Candida v. United States, 250 F.2d, 822; Ray v. United States, 84 F.2d, 654.

In order to highlight the significance of the above

standards in the context of the facts of the instant case, we quote from page 3 of the opinion of the court below, the District Court of Appeal, State of California, First Appellate District, Division Two:

> "At a subsequent meeting on Thursday, January 10, workers chosen to go that weekend were given precise instructions for the procedure to be followed by the supervisor of the department's fraud unit. This particular mass operation to determine eligibility was to be conducted by pairs of social workers; the worker known to the recipient would present and identify himself at the front door of the home of the recipient, indicate the exact purpose of the call and request admission. If the request for entry was denied, the workers were directed not to enter the home. If the entry was allowed, they were directed to investigate in the same manner as they had on other occasions for the ANC program.
>
> If the worker was admitted into the home, before proceeding into any other part of the house, he was to ask permission to do so from the recipient. The second worker was to be stationed at the back door or other exit; if the worker at the front door was admitted, he was then to go through the house and let his partner in by the other exit. As in the past the department had withheld benefits from recipients who refused entry to members of the fraud unit, it was asked whether a refusal of entry on January 13 would automatically be a ground for discontinuance. The workers were

> instructed that if admission was not granted, benefits would not automatically be discontinued but the reason for denying admission would subsequently be investigated."

The significant elements in the facts considered by the court are:

1. Pairs of social workers were to call upon the recipient;

2. One of the social workers was to be known to the recipient;

3. The purpose of the call was to determine eligibility;

4. The social worker known to the recipient was to request consent for entry;

5. Denial of consent for entry would require further investigation.

We contend that on the above facts and most particularly in the context of the welfare-worker-recipient relationship, the freedom and intelligent understanding of "consent" did not exist in the instant case.

The Aid to Dependent Children program provides for the welfare of children whose parents are destitute

without any other means of support. Recipients suffer from absolute poverty and virtually total social rejection, which in large measure flows from their condition as well as their racial and ethnic identity. They have no savings, no property, no financial reserves, no relatives on whom they can rely. They are generally uneducated, untrained and with little work experience. Welfare for them is a matter of life and death; if removed from the public assistance roles, their capacity to maintain home and family is minimal if not totally absent. Their dependence on public assistance is, therefore, absolute.

In effect, the condition of total servitude prevails, notwithstanding the educated and enlightened efforts of social workers to create an on-going relationship. The welfare worker supervises the disbursement; he tells the recipient, who has also been repeatedly informed in writing, that he must cooperate with the welfare worker, must submit to the worker's home visits, or in consequence he will lose welfare benefits. The recipient is constantly told that he must cooperate with the welfare worker or in consequence lose the minimal necessities of life. The

welfare worker is not a stranger to the recipient. He is the arm of authority that determines eligibility; in fact, by law, the welfare worker must re-determine eligibility every sixmonths. Very often this is done in a shorter sequence of time on the theory that is all too prevalent that the recipient may be enjoying a standard of living above that set by the welfare agency. The re-determination very often results in the recipient having payments stopped and having to seek other basis of continued existence. There is little doubt that the recipient is aware that a good relationship with the welfare worker will resolve all doubts about eligibility, qualify for additional disbursements and allow, on occasion, for special grants in the recipient's favor. Thus, maintaining the good will of the welfare worker is the paramount concern of the recipient and their passport to survival.

Not only is the recipient suffering the inadequacies that the law has long recognized, i.e., ignorance, poverty and all the consequences of being disadvantaged, but in addition in the instant case, the recipient is suffering the severe limitation of an on-going relationship with the

welfare worker. In such a context, we contend that a consentual relationship cannot exist. The law has long recognized that a consentual relationship is predicated upon a parity between the parties; the law of fiduciaries imposes restraints on the trustee; the law of contracts imposes restraints on the adult in relation to a minor; the criminal law imposes a statutory bar on consent of sexual relations with an underaged minor. The law is replete with situations in which absence of equality based on age, condition or relationships affects "consent". This is particularly evident in the instant case.

The particular facts and circumstances surrounding the act of "consent", including the background experience and conduct of the parties, must be critically examined. We respectfully contend that the court below failed in this regard.

We have recently been reminded of the high standards required for effective consent. In the recent decision of the United States Supreme Court, Miranda v. Arizona, U.S. , 86 S.Ct. ____ (June 13, 1966) in which the Supreme Court restated the principles enunciated in Johnson v. Zerbst, supra:

> "This court has always set high standards of proof for the waiver of constitutional rights."

After stating the duty to warn the accused of his right to remain silent, the Supreme Court further stated:

> "The defendant may waive effectuation of these rights provided that the waiver is made voluntarily, knowingly and intelligently."

The court went beyond the mere token allegiance to the statement to the party making such consent, for in protecting the constitutional rights the court is concerned about unknowing and unintelligent waivers:

> "A once stated warning delivered by those who will conduct the investigation cannot itself suffice to that end among those who most require knowledge of their rights."

We respectfully submit that the recipients of welfare in Alameda County who were the objects of this search could not freely and knowingly and intelligently give consent. We further contend that the request for consent emanating from a social worker who is regularly in contact with the recipient in a relationship of virtually parent and child or master and servant, or giver and taker operates to

create coercion and duress.

In view of the absence in these circumstances of consent to satisfy the constitutional mandate, we respectfully submit that the Appellant acted properly in his refusal to participate in the mass illegal search.

POINT II

CONCLUSION

For all of the foregoing reasons, Appellant's petition for hearing should be granted.

Dated: September 20, 1966.

Respectfully submitted,

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Of Counsel
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Case #22429

SUPREME COURT OF THE
STATE OF CALIFORNIA

BENNY MAX PARRISH,	:	
Petitioner and Appellant,	:	Case #22429
- against -	:	
THE CIVIL SERVICE COMMISSION OF THE COUNTY OF ALAMEDA, State of California,	:	
Respondents.	:	

BRIEF OF AMICI CURIAE

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TABLE OF CONTENTS

	Page
INTEREST OF AMICI CURIAE	1
STATEMENT	2
THE FACTS	3
STATEMENT OF THE CASE	
POINT I THE CONSTITUTIONAL MANDATE FOR "CONSENT TO WAIVE A CONSTITUTIONAL RIGHT" IS NOT SATISFIED IN THE INSTANT CASE.	4
POINT II THE DEPENDENT RELATIONSHIP BETWEEN PARRISH AND THE FAMILIES INVESTIGATED PRECLUDE THE POSSIBILITY OF MEANINGFUL CONSENT TO THE ENTRY INTO ONE'S HOME AT 6:30 A.M.	14
CONCLUSION	26

SUPREME COURT OF THE
STATE OF CALIFORNIA

- -X

BENNY MAX PARRISH, :

Petitioner and Appellant, :

- against - :

THE CIVIL SERVICE COMMISSION OF THE :
COUNTY OF ALAMEDA, State of California,
:

Respondents. :

- -X

BRIEF OF AMICI CURIAE

INTEREST OF AMICI CURIAE

The Scholarship Education and Defense Fund for Racial Equality is an organization concerned with the education, training and defense of minority persons for the enhancement of racial equality.

The Congress of Racial Equality is a nationwide membership organization active in the field of race relations, most particularly the correction of wrongs suffered by minority groups.

The Scholarship Education and Defense Fund for Racial Equality and the Congress of Racial Equality have a special interest in the issues presented on the appeal of the instant case. The knock-on-the-door in the middle

of the night is the harbinger of harm to minority groups. Often, ignorance, fear and futility compel the poor to accept actions by those in authority which would be vigorously challenged by the educated and well-to-do. Special conditions prevail when authority seeks to impose techniques of surveillance and search on the poor that are not otherwise imposed upon other segments of the community. As a result of administrative proceedings and litigation throughout the United States, the Scholarship Education and Defense Fund for Racial Equality and the Congress of Racial Equality have acquired unique awareness of the pivotal issues in the instant case.

This brief will focus on the issues that have singular significance to the organization, to wit: The planned, calculated violation of constitutional rights, including the right to privacy, and those protected under the Fourth and Fifth Amendments to the United States Constitution, of some 400 families in Alameda County subsisting on Aid to Needy Children benefits. The favorable determination of this issue will re-affirm the privacy of the home from state intrusion and remove a significant and continuing restriction suffered by the poor.

STATEMENT

This brief is submitted in support of a petition by Appellant for a hearing by the Supreme Court of the

State of California after a decision by the District Court of Appeal, First Appellate District, Division Two, rendered on May 31, 1966.

Appellant seeks reinstatement as a permanently employed Social Worker II, Case Worker in the Aid to Needy Children Program in the Department of Welfare of the County of Alameda, State of California.

THE FACTS

Appellant refused to obey the order of the Director of the Department of Welfare of the County of Alameda directing that Appellant participate in a mass, pre-dawn surprise search of the homes of beneficiaries under the ANC program. The unscheduled visits were to occur on SUNDAY, January 13, 1963, between 6:30 and 10:30 in the morning. The main purpose of "operation bed check" was to look for absent parents or unauthorized males on the premises. A secondary purpose was to determine continuing eligibility. Both purposes involved potential criminal prosecution and, as stated in the opinion below, in the ordinary course, involved referral to the District Attorney's office for prosecution.

The instructions to the welfare workers stated that two social workers were to appear at the home of the welfare recipient; the worker known to the recipient at the front door to seek admittance and the other worker at

the rear of the home to make observations about the house occupants.

Refusing to participate in the mass search, Appellant stated that such searches were, in his view, degrading, presumed the guilt of recipients, violated the right to privacy, and were inconsistent with the rehabilitative goals of the ANC program.

Appellant was, thereupon, dismissed and commenced the instant mandamus proceeding for reinstatement. The denial of the petition was affirmed by the Court below.

POINT I

THE CONSTITUTIONAL MANDATE FOR "CONSENT TO WAIVE A CONSTITUTIONAL RIGHT" IS NOT SATISFIED IN THE INSTANT CASE.

An exploratory search by government employees under the conditions stated by the Director of the Welfare Department absent specific suspicions of criminal acts on the part of the specific victims of the search is in direct conflict with the severe limitations of the Fourth Amendment of the United States Constitution mandating restrictions on unlawful search and seizure. While Appellant was not a criminal investigator, close correlation exists between the welfare agency and criminal enforcement officials. Accordingly in no sense are we merely discussing possible loss of financial assistance

(dreadful as that is by itself) but possible violations of the criminal law. In that sense, we are concerned with the waiver of the right to refuse to permit a search and also with the right to refuse to testify against oneself.

Lacking specificity as to persons, places and probable cause that the suspects are committing or have committed a crime, a general search fishing-expedition directed at a mass of welfare recipients, indicated on the facts of the instant case, would be insufficient to satisfy the strict requisites for a warrant. Dumbra v. United States, 268 U.S. 345. Directed as it was at everyone, the innocent as well as possible violators of law, with no knowledge that any violation had taken place, it can hardly be doubted that a warrant would not have issued. In making no effort to obtain a warrant, the Respondents justified a mass search on the defense of "consent".

Only upon the failure to seek consent from the recipient to allow entry to the premises by the social worker is the discharge upheld. In the view of the court below and the Respondents, petitioner was obligated to comply with an order to search the premises of a series of welfare beneficiaries by requesting "consent" for the sole purpose of obtaining evidence of "fraud".

We respectfully dispute this rationale. We submit that the so-called "consent" spoken of in the opinion below cannot operate to waive constitutional protections

on the facts of the instant case. Nothing in his instructions indicated that Appellant was to advise the recipient of his constitutional rights or for that matter whether Appellant, and the others in his classification, were capable of explaining them.

The federal constitutional standards imposed upon the states are particularly strict and precise. Behind such standards a long history exists that has been amplified and clarified in a variety of cases, state and federal. In substance, the courts have taken the view that the standards for the waiver of a federal protection must be coincidental in degree with the value of the federal protection being given up; no less important to the potential waiverer is the knowledge of what it is that is being waived.

In Johnson v. Zerbst, 304 U.S. 458, 464, the court stated:

> "Courts indulge every reasonable presumption against waiver of fundamental rights."

Critical standards employed by courts to examine the operation of waiver of a constitutional right are briefly summarized as follows:

A. When waiver is claimed by public authority, the burden of proof is upon the State to establish affirmatively that such waiver has been freely and voluntarily

given. Hubbard v. Tensely, 336 F. 2d, 854; Badillo v. Superior Court, 46 Cal. 2d, 269.

B. Waiver must be uncontaminated by any form of duress or coercion, actual or implied, direct or indirect. Amos v. United States, 255 U.S. 313; Channel v. United States, 285 F. 2d, 217; Judd v. United States, 190 F. 2d, 649; Higgins v. United States, 209 F. 2d, 819.

C. Waiver to be given freely and intelligently must be unequivocal and specifically given as consent to search, not merely consent to enter. Robertson v. State of Texas, 375 S.W. 457.

D. Waiver to be given freely and intelligently must not simply be "submission" to authority. Waldron v. United States, 219 F. 2d, 37.

E. Finally, waiver cannot be implied or flow simply from failure to challenge or argue with those in authority seeking such consent. Higgins v. United States, supra; Candida v. United States, 250 F. 2d, 822; Ray v. United States, 84 F. 2d, 654.

The Court below applied different standards, (a) in the case of an administrative search and a search leading to criminal charges and (b) in a case involving a waiver of the Fourth Amendment right and a case involving a waiver of Fifth Amendment rights.

The purpose of the raids in the present case was to form a basis for criminal charges and, in any event, the

consent criteria is the same both in administrative and criminal searches. Miranda v. State of Arizona, 86 S. Ct. 1602 (1966). Furthermore, consent is involuntary, in a Fourth Amendment case (as in a Fifth or Sixth Amendments cases) unless the investigator prior to entry advises the subject of the search that: (1) he has a right not to allow them to enter, (2) nothing will be done to the recipient if he does not permit the entry, (3) he has the immediate right to an attorney to help advise him. Furthermore the "environment" or atmosphere existing at the time the consent is given is such that the consent can be considered voluntary. Merely advising the suspect (or Welfare recipient) of his rights does not mean that the consent thereafter given is voluntary. Miranda v. State of Arizona, supra. Welfare recipients (like the defendant in Lynum v. Illinois, 372 U.S. 528 (1963)) cannot be considered to have consented because of the weakness of their situation arising out of the inopportune circumstances in which they find themselves. (Lynum v. Illinois 372 U.S. 528 (1963); Miranda v. State of Arizona, supra). Here, as in Miranda, "it is obvious that such an interrogation environment is created for no purpose other than to subjugate the individual to the will of his examiner. This atmosphere carries its own badge of intimidation. To be sure, this is not physical intimidation but it is equally destructive of human dignity."

In order to highlight the significance of the above standards in the context of the facts of the instant case, we quote from page 3 of the opinion of the court below, the District Court of Appeal, State of California, First Appellate District, Division Two:

> "At a subsequent meeting on Thursday, January 10, workers chosen to go that weekend were given precise instructions for the procedure to be followed by the supervisor of the department's fraud unit. This particular mass operation to determine eligibility was to be conducted by pairs of social workers; the worker known to the recipient would present and identify himself at the front door of the home of the recipient, indicate the exact purpose of the call and request admission. If the request for entry was denied, the workers were directed not to enter the home. If the entry was allowed, they were directed to investigate in the same manner as they had on other occasions for the ANC program.
>
> If the worker was admitted into the home, before proceeding into any other part of the house, he was to ask permission to do so from the recipient. The second worker was to be stationed at the back door or other exit; if the worker at the front door was admitted, he was then to go through the house and let his partner in by the other exit. As in the past the department had withheld benefits from recipients who refused entry to members of the fraud unit, it was asked whether a refusal of entry on January 13 would automatically be a ground for discontinuance. The workers were instructed that if admission was not granted, benefits would not automatically be discontinued but the reason for denying admission would subsequently be investigated."

The significant elements in the facts considered by the court are:

1. Pairs of social workers were to call upon the recipient;

2. One of the social workers was to be known to the recipient;

3. The purpose of the call was to determine eligibility;

4. The social worker known to the recipient was to request consent for entry;

5. Denial of consent for entry would require further investigation.

We contend that on the above facts and most particularly in the context of the welfare-worker-recipient relationship, the freedom and intelligent understanding of waiver did not exist in the instant case.

The Aid to Needy Children program provides for the welfare of children whose parents are destitute without any other means of support. Recipients suffer from absolute poverty and virtually total social rejection, which in large measure flows from their condition as well as their racial and ethnic identity. With no savings, no property, no financial reserves, no relatives on whom they can rely, generally uneducated, untrained and with little work experience, welfare for them is a matter of life and death. Removed from the public assistance roles, their capacity to maintain home and family is minimal, perhaps totally non-existent. Dependence of such persons on public

assistance is, therefore, absolute.

In effect, the condition of total servitude prevails, notwithstanding the educated and enlightened efforts of social workers to create an on-going relationship. The welfare worker supervises the disbursement; he tells the recipient, who has also been repeatedly informed in writing, that he must cooperate with the welfare worker, must submit to the worker's home visits, or in consequence he will lose welfare benefits. The recipient is constantly told that he must cooperate with the welfare worker or in consequence lose the minimal necessities of life. The welfare worker is not a stranger to the recipient. He is the arm of authority that determines eligibility; in fact, by law, the welfare worker must re-determine eligibility every six months. Very often this is done in a shorter sequence of time on the theory that is all too prevalent that the recipient may be enjoying a standard of living above that set by the welfare agency. The redetermination very often results in the recipient having payments stopped and having to seek other basis of continued existence. There is little doubt that the recipient is aware that a good relationship with the welfare worker will resolve all doubts about eligibility, qualify for additional disbursements and allow, on occasion, for special grants in the recipient's favor. Thus, maintaining the good will of the welfare worker is the paramount

concern of the recipient and their passport to survival.

Not only is the recipient suffering the inadequacies that the law has long recognized, i.e., ignorance, poverty and all the consequences of being disadvantaged, but in addition in the instant case, the recipient is suffering the severe limitation of an on-going relationship with the welfare worker. In such a context, we contend that a consensual relationship cannot exist. The law has long recognized that a consensual relationship is predicated upon a parity between the parties; the law of fiduciaries imposes restraints on the trustee; the law of contracts imposes restraints on the adult in relation to a minor; the criminal law imposes a statutory bar on consent of sexual relations with an underaged minor. The law is replete with situations in which absence of equality based on age, condition or relationships affects "consent". This is particularly evident in the instant case.

The particular facts and circumstances surrounding the act of "consent", including the background experience and conduct of the parties, must be critically examined. We respectfully contend that the court below failed in this regard.

We have recently been reminded of the high standards required for effective consent. In the recent decision of the United States Supreme Court, Miranda v. State of Arizona, 86 S. Ct. 1602 (1966), in which the Supreme

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Court restated the principles enunciated in Johnson v. Zerbst, supra:

> "This court has always set high standards of proof for the waiver of constitutional rights."

After stating the duty to warn the accused of his right to remain silent, the Supreme Court further stated:

> "The defendant may waive effectuation of these rights provided that the waiver is made voluntarily, knowingly and intelligently."

The court went beyond the mere token allegiance to the statement to the party making such consent, for in protecting the constitutional rights the court is concerned about unknowing and unintelligent waivers:

> "A once stated warning delivered by those who will conduct the investigation cannot itself suffice to that end among those who most require knowledge of their rights."

We respectfully submit that the recipients of welfare in Alameda County who were the objects of this search could not freely and knowingly and intelligently give consent. We further contend that the request for consent emanating from a social worker who is regularly in contact with the recipient in a relationship of virtually parent and child or master and servant, or giver and taker operates to create coercion and duress.

In view of the absence in these circumstances of

consent to satisfy the constitutional mandate, we respectfully submit that the Appellant acted properly in his refusal to participate in the mass illegal search.

POINT II

THE DEPENDENT RELATIONSHIP BETWEEN PARRISH AND THE FAMILIES INVESTIGATED PRECLUDE THE POSSIBILITY OF MEANINGFUL CONSENT TO THE ENTRY INTO ONE'S HOME AT 6:30 A. M.

Closely related to, but not identical with waiver of the right to refuse a search without a warrant, and the right to refuse to give testimony against oneself, is the right to deny entry into one's house without consent of the occupant. In this respect, the case before us is related to Griswold v. Connecticut 381 U.S. 479 (1965).

In the Griswold case, the Court, in reversing appellant's conviction for disseminating birth control instructions, declared a right of privacy "created by several fundamental constitutional guarantees." The Chief Justice and Justices Brennan and Goldberg, stated: "The concept of liberty is not so restricted and it embraces the right of marital privacy although that right is not mentioned explicitly in the Constitution", (85 S. Ct. 1683).

The Court below held Griswold inapplicable because this case does not involve "married recipients" (p. 12 of the Decision). The record below does not indicate whether the recipients whose homes were invaded were mar-

ried; it may be they all were married and that the "man in the house" may have been a husband who had not previously lived at home. But this is not the point. The poor, unable to afford the cost of divorce, often have relationships that are not legitimatized. Those relationships are as stable as are those arising out of lawful marriage. The Welfare Agency may not intrude into this relationship, may not investigate into it and may not seek to destroy it by casting an aura of illegality over it. Their only interest is to determine if the "man in the house" is supplying funds to the recipients with whom he is living. The Welfare Department may not, in an attempt to establish these frauds by the use of "midnight raids" encroach on the more important guaranteed constitutional rights. Mr. Justice Douglas said in Griswold "the First Amendment is a penumbra where privacy is protected from government intrusion" and that "the Fourth and Fifth Amendments as described in Boyd v. United States, 116 U.S. 616", protect against all government excursions into the "sanctity of a man's home and the privacy of life." A recipient's private life is as worthy of protection as that of any other citizen. The State cannot, in seeking to establish either violation of the criminal laws or violations of the Welfare Law, violate constitutional rights.

The right to establish a home, have meaningful relationships, and have and bring up children in whatever

manner the parents desire is constitutionally protected.

Mr. Justice White in Griswold stated:

> ". . . the liberty entitled to protection under the Fourteenth Amendment includes the right "to marry, establish a home and bring up children," Meyer v. State of Nebraska, 262 U.S. 390, 399, 43 S. Ct. 625, 626, 67 L. Ed. 2d 1042 and "the liberty * * * to direct the upbringing and education of children," Pierce v. Society of Sisters, 268 U.S. 510, 534-535, 45 S. Ct. 571, 573, 69 L. Ed. 1070, and that these are among "the basic civil rights of man." Skinner v. State of Oklahoma, 316 U.S. 535, 541, 62 S. Ct. 1110, 1113, 86 L. Ed. 1655. These decisions affirm that there is a "realm of family life which the state cannot enter" without substantial justification. Prince v. Com. of Massachusetts, 321 U.S. 158, 166, 64 S. Ct. 438, 442, 88 L. Ed. 645. Surely the right invoked in this case, to be free of regulation of the intimacies of the marriage relationship, "come(s) to this Court with a momentum for respect lacking when appeal is made to liberties which derive merely from shifting economic arrangements," Kovacs v. Cooper, 336 U.S. 77, 95, 69 S. Ct. 448, 458, 93 L. Ed. 513 (opinion of Frankfurter). . ."

Entry cannot be made legally except by consent or warrant. Above we have discussed that no facts existed upon which to base a warrant, nor were there present circumstances upon which a waiver of Fourth or Fifth Amendment rights could be predicated. At this point we consider whether there were conditions present upon which a consent to the entry into one's house may be based.

Normally, business visitors, such as Parrish, would have been, do not request a right to entry at 6:30 of a Sunday morning. May we not assume then that similarly,

except for the authority Parrish would have borne vis-a-vis the occupant at the home, he would not have been received. The status relationship between these parties, however, made such entry, at this improper hour, very likely. In the same sense, because of a parallel relationship, the representative of the feudal overlord, would not have been denied entry. No less now in the case before us, than in the ancient feudal times, the question of "consent" is not a serious factor. A relationship of dependancy is hardly consonant with an ability to say "No", even at 6:30 A.M.

"Consent" is only a meaningful term when we are dealing with persons of some independent, where one person's existence is not determined by the decisions of the other. Obviously were we to twist the arm of a welfare recipient no one could say there was a meaningful consent. And yet when we seek consent by the subtler means of asking, with the big stick clearly showing, can consent be meaningful?

In Lankford v. Gelston (Docket No. 10384) the United States Court of Appeals for the Fourth Circuit (June 23, 1966), enjoined wholesale raids on individuals whose names had been furnished by anonymous phone calls to the Police Department as possible suspects in a homicide investigation. Orders were promulgated by the Police Commissioner which purported to give all suspects the constitutional rights guaranteed them by the Constitution. The

court found the fact that Police officers would face disciplinary action if they failed to carry out the Police Commissioner's instructions to advise the suspects of their rights was not enough to "assume . . . the instructions would have been followed and sonsent obtained. (Page 9 of the Decision below). Mr. Justice Soboloff, after discussing the "terrifying experiences to which occupants of the searched homes were subjected" (the raids were conducted at 2:00 o'clock in the morning after the officers gained entry by indicating they were seeking to make an investigation), stated:

> "The parties seeking redress have committed no acts warranting violation of the privacy of their homes; there has never been any suspicion concerning them or their associations. It was not contended by the Attorney General, nor could it have been contended, that information from an anonymous and unverifiable source is probable cause for the search of a home."

The court below would have us wait until one of the welfare recipients brought a suit for it is only then that the issue could be more squarely presented. The Lankford Court stated:

> "But it is only in the rare instance that a person not accused or even suspected of any crime petitions the court for redress of police invasion of his home. The reason is not that such invasions do not occur but, as Mr. Justice Jackson eloquently put it:
>
> > 'Only occasional and more flagrant abuses come to the attention of the courts, and then

> only those where the search and seizure yields incriminating evidence and the defendant is at least sufficiently compromised to be indicted. If the officers raid a home, an office, or stop and search an automobile but find nothing incriminating, this invasion of the personal liberty of the innocent too often finds no practical redress. There may be, and I am convinced that there are, many unlawful searches of homes and automobiles of innocent people which turn up nothing incriminating, in which no arrest is made, about which courts do nothing, and about which we never hear.
>
> '*** There is no opportunity for injunction or appeal to disinterested intervention. The citizen's choice is quietly to submit to whatever the officers undertake or to resist at risk of arrest or immediate violence.' Brinegar v. United States, 338 U.S. 160, 181-182 (1949) (Mr. Justice Jackson dissenting).

"After so vast a demonstration of disregard of private rights, the complainants are entitled to a clear response. While the immediate pressure of wholesale raids has been withdrawn, the practice of indiscriminate searches of homes has been renounced only obliquely, if at all, and the danger of repetition has not been removed. The sense of impending crisis in police-community relations persists, and nothing would so directly ameliorate it as a judicial decree forbidding the practices complained of.

"The police department is society's instrumentality to maintain law and order, and to be fully effective it must have public confidence and cooperation. Confidence can exist only if it is generally recognized that the department uses its enforcement procedures with integrity and zeal, according to law and without resort to oppressive measures. Law observance by the police cannot be divorced from law enforcement. When official conduct feeds a sense of injustice, raises barriers between the department and segments of the community, and breeds disrespect for the law, the difficulties of law enforcement are multiplied."

The classic words of Mr. Justice Brandeis, dissenting in Olmstead v. United States, 277 U.S. 438, 485 (1928), apply with full force in the present context:

> "Decency, security and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperilled if it fails to observe the law scrupulously. Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the end justifies the means - to declare that the Government may commit crimes in order to secure the conviction of a private criminal -- would bring terrible retribution. Against that pernicious doctrine this Court should resolutely set its face."

The "consent" obtained in this case is involuntary even if the Welfare Workers carried out their instructions. The generalized statement of the court below concerning the law of consent as established in narcotics cases requires a finding that there was no consent in the present case. Honig v. United States, 208 F. 2d 916. The court decision which is specifically directed to the fact pattern in this case, is no longer the law. In Pekar v. United States, 315 F. 2d 319, the officer identified himself as being from the FBI and stated he wanted to talk to the defendant regarding an official FBI investigation. Defendant allowed him to enter. After the officer was in

the apartment he asked defendant if he minded if they "looked around" and defendant said "no". The officer found contraband and the defendant moved to suppress. The Court granted the motion, reversing the lower court and stating:

> "It is clear that in the absence of a search or arrest warrant the premises of a person may be searched if these has been given to the authorities a free and voluntary consent that they may do so. Calhoun v. United States, 172 F. 2d 457, 5th Cir. But it is equally clear that if this consent is obtained by the use of force or pressure, or where superior authority had any place in the obtaining of the consent, the consent is no consent at all, and the constitutional guarantees against unreasonable searches and seizures have been violated. Canida v. United States, 250 F. 2d 822, 5th Cir. It was stated in this last cited case that:
>
> 'Especially is this the case (i.e., that constitutional rights have been violated) in situations of this kind involving such a disparity of position as that of the government agent and this humble defendant. Here, after failing to induce or force her to sign a consent, the agents, after consulting with superior authority and getting backing for their forcing their way in, proceeded with the search under the wholly untenable claim that, though they had been unable to get her to agree in writing to consent, they had obtained her free and voluntary oral consent, in short her invitation to enter her home and search it out.' 250 F. 2d at 825.

This Court in Ray v. United States, 84 F. 2d 654, 656, 5th Cir., in emphasizing the inviolability of the home, said:

> 'In respect of homes, the constitutional provision against unreasonable searches and seizures may not be relaxed to find volitional, acts which the evidence leaves

no doubt were, if not expressly, impliedly coerced.'

The United States Courts of Appeals for the District of Columbia and 9th Circuits have expressed a view more extreme than the one of this circuit; Judd v. United States, 89 U.S. App. DC. 64, 190 F. 2d 649; Channel v. United States, 285 F. 2d, 217, 9th Cir. In Judd, the defendant told narcotics agents that 'my apartment is clean. There is nothing there. You can go out and search the place.' (The defendant at the time he made this statement was in jail). As to whether the defendant had voluntarily and freely consented to a search of his premises, the court said:

'Conceivably, that is the calm statement of an innocent man; conceivably, again, it is but the false bravado of a small-time criminal. But, however it be characterized, it hardly establishes willing agreement that the officers search the household without first procuring a warrant. Comparable statements have been held insufficient where the victim of the search was safely in his home ***'. 190 F. 2d at 651.

The Court of Appeals for the Ninth Circuit quoted with approval the above language and holding in Channel. Similarly, see also, Higgins v. United States, 93 U.S. App. D.C. 340, 209 F. 2d 819:

'(No) sane man who denies his guilt would actually be willing that policemen search his room for contraband which is certain to be discovered. It follows that *** words or signs of acquiescence in the search, accompanied by denial of guilt, do not show consent; at least in the absence of some extraordinary circumstances, such as ignorance that contraband is present.' 209 F. 2d at 820.

* * * * * * * *

There is an additional circumstance that convinces the Court that the defendant did not freely and voluntarily consent to a search of his room. The agents merely told defendant when he asked what

> they wanted that they wanted to talk to him about an investigation not that they wanted to search his room, which they did in order to substantiate their meager suspicion gotten from the limousine driver."

Parrish, in his refusal, was saying, in substance, "There is no such thing as honorable consent at 6:30 A.M., and you have no right to make me ask for it. I will obtain it, but only because of fear of what I can do to the family involved, and not because such consent was freely given. I will have invaded their right to privacy on a Sunday morning under a false pretense, in reality under duress."

While Parrish understood that mere denial of entry would not per se cause suspension of benefits to the welfare family, in no way could he tell the family honestly that refusal to permit his entry would have no bearing on future receipts of benefits. Were the dialogue between the family and Parrish to have gotten this far, it must stop at this point, and entry take place. Who, with needy children depending upon her, would say "I don't want you to come in at this time. You don't have a right to ask me at 6:30 on a Sunday morning."

Less consensual would such an act be, in a true sense, than is the "consent" to a sexual act for a girl under the statutory age. While circumstances may exist under which a young woman undoubtedly has the capacity freely to consent, the law says we will not permit that

to be a factor for consideration. A person of such age should not be placed in such a position.

In the case before us we have a similar factual situation. There may be some few who may freely consent and have the understanding of such consent, but let us think of all who do not freely consent, but do so only under duress, because of the relationship. We will have invaded their rights in violation of the Constitution of the United States. While a choice exists theoretically, in truth, no serious choice is offered the family.

Surely the criminal investigator is not so devoid of strength and intelligence that he must resort to the destruction of privacy amongst families who have little enough of that, and precious little else.

Society has grown beyond the era when one's rights were dependent upon one's status in life. No businessman, no professional person would be treated this way; i.e., to a fishing expedition at 6:30 in the morning; and neither should welfare recipients. Where crime exists it must be investigated and routed out, but on a basis similar to all, and not by a pretense that the weak consent to the invasion of their rights by the representatives of the strong.

On behalf of Respondent, it is urged, as accepted by the Court below, that a choice was available to welfare recipients upon hearing the knock-on-the-door. They, on

the one hand could have admitted appellant, or, on the other, they could have been told to leave. Above we have attempted to show the fallacy of this argument.

But taking the position of respondent at its face value that, arguendo, a choice was available, it is no less true that Appellant urged his position with integrity, even from the view of respondent.

The ultimate employment penalty for urging a seriously made constitutional and professional position is hardly appropriate.

Being so we must inquire then, why was this extreme penalty made? Any inquiry into this must perforce lead us to the original question concerning the nature of the "free-choice".

Getting into the recipient's house, we see, was so important that a man is discharged for urging its impropriety, under the circumstances demanded by respondent, and in good conscience, refusing to undertake such activity.

In Dombrowski v. Pfister, 380 U.S. 499, another context, the U.S. Supreme Court has spoken eloquently about the chilling effect on the future exercise of Constitutional Rights:

> "The chilling effect upon the exercise of First Amendment rights may derive from the fact of the prosecution, unaffected by the prospects of its success or failure." at p. 487.

When the State acts to punish their exercise in a particular situation, the chilling effect here is equally clear; a man puts forward an honorable position (even if he is incorrect) and is destroyed, as an employee, for so doing.

The effect upon the recipients is certain: only the most intrepid will now exercise "free-choice"; the County means business and it is even easier to cut off welfare aid than to discharge. And furthermore the effect upon employees, who might have taken the thought seriously that a choice existed for the recipient, is also clear. Not only will they not follow Parrish, but, more importantly, they will not even give the appearance of following Parrish, sotto voce: They will get into the house, and not subject themselves to criticism.

We, therefore, urge that not only is the position of respondent untenable as to the existence of a choice, but further we urge that respondent never intended, judging from the results herein, that such choice exist, except on paper.

CONCLUSION

For all of the foregoing reasons, Appellant's petition for hearing should be granted.

Dated: September 27, 1966.

Respectfully submitted,

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1 Civil No. 22,556

In the

District Court of Appeal

State of California

FIRST APPELLATE DISTRICT

DIVISION TWO

BENNY MAX PARRISH,
Petitioner and Appellant,

vs.

THE CIVIL SERVICE COMMISSION OF THE COUNTY OF ALAMEDA, State of California, et al.,
Respondents.

BRIEF OF THE AMERICAN CIVIL LIBERTIES UNION OF NORTHERN CALIFORNIA, AMICUS CURIAE, ON BEHALF OF APPELLANT

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Subject Index

	Page
Interest of amicus	2
Issues to be discussed	2
Argument	3
I. Respondents' mass search violated the Fourth and Fourteenth Amendments of the Federal Constitution	3
A. Respondents have the burden of proving the constitutionality of the search	3
B. The mass search was unlawful under settled principles unless justifiable on the basis that it involved persons receiving public assistance or justifiable on the theory of consent	4
C. The fact that persons receiving public assistance were involved did not constitute proper justification	8
D. The mass searches cannot be justified on the theory of valid consent	13
II. The mass search was invalid because it constituted local action in a field preempted by state law	19
Conclusion	22

Table of Authorities Cited

Cases	Pages
Agnello v. United States (1925) 269 U.S. 20	5
American Civil Liberties Union v. Board of Education (1961) 55 Cal. 2d 167	10
Amos v. United States (1921) 255 U.S. 313	14, 16
Badillo v. Superior Court (1956) 46 Cal. 2d 269	3
Bielicki v. Superior Court (1962) 57 Cal. 2d 602	3, 7, 12
Boyd v. United States, 116 U.S. 616	8
Britt v. Superior Court (1962) 58 Cal. 2d 469	7, 12
Castaneda v. Superior Court (1963) 59 Cal. 2d 439	3, 5, 14
Chapman v. United States (1961) 365 U.S. 610	5
Cramp v. Board of Public Instruction, Orange County, Florida (1961) 368 U.S. 278	10
Danskin v. San Diego Unified School District (1946) 28 Cal. 2d 536	10
Fort v. Civil Service Commission of the County of Alameda (1964) 61 Cal. 2d 331	10, 11, 17
Frank v. Maryland (1959) 359 U.S. 360	8
Frost Trucking Co. v. R. R. Com. (1926) 271 U.S. 583	10
Gibson v. Florida Legislative Investigation Committee (1963) 372 U.S. 539	10
Griswold v. Connecticut (1965) ..... U.S. ....., 14 L. Ed. 2d 510	4, 12
Housing Authority of the City of Los Angeles v. Cordova (1955) 130 Cal. App. 2d Supp. 883	10
In re Lane (1962) 58 Cal. 2d 99	19
Johnson v. United States (1948) 333 U.S. 10	5, 14, 15
Kaufman v. Brown (1949) 93 Cal. App. 2d 508	3
Lamont v. Postmaster General (1965) ..... U.S. ....., 14 L. Ed. 2d 398	17
Lawson v. Housing Authority of Milwaukee, 270 Wis. 269, 70 N.W. 2d 605	10
Lynumn v. Illinois (1963) 372 U.S. 528	19
Mackie v. Ambassador Hotel etc. Corp. (1932) 123 Cal. App. 215	4
N.A.A.C.P. v. Button (1963) 371 U.S. 415	10, 11
People v. Cruz (1964) 61 Cal. 2d 861	3
People v. Haven (1963) 59 Cal. 2d 713	5, 14

Pages

People v. Shelton (1964) 60 Cal. 2d 740 ..... 5, 9, 13
People v. Trout (1960) 54 Cal. 2d 576 17
Peters v. Bigelow (1934) 137 Cal. App. 135 ..... 3, 4
Shelton v. Tucker (1960) 364 U.S. 479 11
Sherbert v. Verner (1963) 374 U.S. 398 ..... 9, 10, 11
Steinberg v. U. S. (1958) 143 Ct. Cl. 1, 163 F. Supp. 590 .. 10
Stroble v. California (1952) 343 U.S. 181 17
Taley v. State of California (1960) 362 U.S. 60 11
Thornhill v. Alabama (1940) 310 U.S. 88 17
Tompkins v. Superior Court (1963) 59 Cal. 2d 65 ..... 9, 13
Torcaso v. Watkins (1961) 367 U.S. 488 10
United States v. Lefkowitz (1932) 285 U.S. 452 7
United States v. Marra (D.C.W.D.N.Y. 1930) 40 F. 2d 271 14
United States v. Ventresca, 13 L. Ed. 2d 684 5
Wieman v. Updegraff (1952) 344 U.S. 183 10
Wirin v. Horrall, 85 C.A. 2d 497 8
Wollam v. City of Palm Springs (1963) 59 Cal. 2d 276 11

Codes

Welfare & Institutions Code:
Part 2, Division 2, sections 1500 et seq. 2
Section 1500(c) 12
Section 1560 21
Section 1563 18
Sections 1570-71 8
Sections 1571-72 18

Constitutions

California Constitution:
Article I, Section 19 3
United States Constitution:
First Amendment 11
Fourth Amendment 2, 3, 4, 11, 12
Fourteenth Amendment 2, 3

Texts

73 Harv. L. Rev., Unconstitutional Conditions (1960) 1595, 1599, 1602 10
72 Yale L. J., Reich, Midnight Welfare Searches and the Social Security Act (1963), 1347, 1348-1350 ..... 18, 19

INTEREST OF AMICUS

The American Civil Liberties Union of Northern California is a branch of a national organization dedicated to the preservation of constitutional rights. This case concerns the constitutionality of mass "bed checks" of welfare recipients. It puts in issue not only the rights of those disadvantaged persons, but the rights and duties of the government personnel who administer welfare programs. Our brief is submitted in the conviction that arguments and authorities in addition to those appearing in appellant's opening brief will be helpful to the Court in properly resolving issues that are so vital to so many. Although much of what has already been said on behalf of appellant is important enough to warrant emphasis by repetition, it will go unmentioned here; our intention is not to repeat but to amplify and supplement.

ISSUES TO BE DISCUSSED

The issues which will be discussed are:

I. Did the mass search ordered and conducted by respondents violate the prohibition of the Fourth and Fourteenth Amendments of the federal Constitution against unreasonable searches and seizures?

II. Was the search invalid as unauthorized local action in a field preempted by state law?

If either of these questions is answered in the affirmative, the dismissal of social worker Parrish for refusal to participate in the "bed checks" must be set aside.

ARGUMENT

I. RESPONDENTS' MASS SEARCH VIOLATED THE FOURTH AND FOURTEENTH AMENDMENTS OF THE FEDERAL CONSTITUTION.

The mass search which respondents planned and executed and in which appellant refused to participate was an unlawful and unreasonable search clearly condemned by the Fourth Amendment of the federal Constitution, applicable to the states through the Fourteenth Amendment.[1]

A. Respondents Have the Burden of Proving the Constitutionality of the Search.

This is not a case in which the familiar presumption in favor of the validity of governmental action may be invoked. To the contrary, search warrants were neither sought nor obtained by respondents, and the absence of a warrant renders any search or arrest *prima facie* invalid in civil proceedings as well as criminal, placing on the governmental authority the burden of proving justification. (E.g. *People v. Cruz* (1964) 61 Cal. 2d 861, 865; *Castaneda v. Superior Court* (1963) 59 Cal. 2d 439, 444; *Badillo v. Superior Court* (1956) 46 Cal. 2d 269, 272; *Kaufman v. Brown* (1949) 93 Cal. App. 2d 508, 513; *Peters v.*

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[1]For applicability of the Fourth Amendment to the states, see *Mapp v. Ohio* (1961) 367 U.S. 643.

A comparable provision on unreasonable searches is contained in Section 19 of Article I of our state Constitution, and, although this type of problem is usually discussed in connection with the Fourth Amendment, there are instances in which the courts cite the state provision as well as the federal prohibition. (E.g. *Bielicki v. Superior Court* (1962) 57 Cal. 2d 602, 605.) What is said in this brief with respect to the Fourth Amendment is intended as equally applicable to Section 19.

Bigelow (1934) 137 Cal. App. 135; *Mackie v. Ambassador Hotel etc. Corp.* (1932) 123 Cal. App. 215.)

B. The Mass Search Was Unlawful Under Settled Principles Unless Justifiable on the Basis That It Involved Persons Receiving Public Assistance or Justifiable on the Theory of Consent.

The cases dealing with the meaning and scope of the prohibition against unreasonable searches are, of course, many and varied, as are the words used to state the applicable principles and the factors stressed to demonstrate unreasonableness. However, since two principles of long standing have in recent years so clearly emerged as the settled law, and since each of those principles is so clearly applicable in the present case and determinative in and of itself, they receive the main emphasis in this brief. We deal only peripherally, for example, with the very recent decision of the United States Supreme Court which, in striking down the so-called birth control statute of Connecticut on the basis of various amendments to the federal Constitution, including the Fourth, appears to have gone further than ever before in delineating and shielding the right of privacy. (*Griswold v. Connecticut* (1965) ..... U.S. ....., 14 L. Ed. 2d 510.) Obviously, it would become necessary to consider the effect of that decision if the present case were not, as we urge, conclusively disposed of by the more familiar principles hereinafter discussed.

The United States Supreme Court and the highest court of this state have established that the Fourth Amendment, for reasons deeply rooted in our history

and our form of government, declares a person's right of privacy and security in his own home to be so vital, and the policy of having the justification for invading that right decided by a magistrate rather than by law enforcement authorities to be so transcendent that the search of a home without a warrant, even where there is ample evidence to show reasonable or probable cause for the search, is unlawful unless made incident to a lawful arrest, because of a grave emergency precluding the acquisition of a warrant, or pursuant to waiver by valid consent. (E.g. *United States v. Ventresca,* 13 L. Ed. 2d 684, 688; *Chapman v. United States* (1961) 365 U.S. 610; *Johnson v. United States* (1948) 333 U.S. 10; *Agnello v. United States* (1925) 269 U.S. 20; *People v. Shelton* (1964) 60 Cal. 2d 740, 744; *People v. Haven* (1963) 59 Cal. 2d 713, 720; *Castaneda v. Superior Court* (1963) 59 Cal. 2d 439, 443.)

The wisdom of the constitutional requirement for the issuance of a warrant to prevent oppression and harassment by government officials is nowhere more evident than here where at least half of the homes subject to the mass search were, by the very design of the operation, those of persons as to whom there was not even a reason to be suspicious, and the other half of the homes were those of persons who were "suspect" merely in the sense that their eligibility for public assistance had not been verified during the preceding six months.[1a]

[1a]See footnote 4, *infra.*

It is obvious too, that the search was neither incident to an arrest nor connected with a grave emergency rendering the acquisition of warrants infeasible. To the contrary, the operation was planned well in advance of its execution, and it is manifest that warrants were not sought either because it was indifferently assumed that the subject persons had no rights in the matter worthy of concern or because it was recognized that no magistrate could be expected to issue warrants for such a search.

In short, the illegality of the mass search is unmistakable under the standards stated above unless the respondents can show justification on the theory that welfare recipients waive their immunity to unlawful searches as a condition to receiving public assistance, or on the theory that a valid consent to the search was sought and given as to the persons whose privacy was invaded by the untimely intrusion of the Alameda County Welfare Department. Before passing to these two theories of justification, we briefly examine some further principles which bear upon the power to search.

The mass search must stand condemned in the light of the settled principle that the Fourth Amendment forbids invasion of the right of privacy, whether in the home or elsewhere, by governmental action which is not based on reasonable or probable cause but which amounts to a general exploratory search conducted for the sole purpose of discovering evidence of guilt. The Supreme Court of California, citing various federal and California decisions including

United States v. Lefkowitz (1932) 285 U.S. 452, 465, had recent occasion to reaffirm this principle in condemning the surveillance from a hidden vantage point of toilet booths in public restrooms for the purpose of discovering persons who committed sex crimes while occupying the booths. (*Britt v. Superior Court* (1962) 58 Cal. 2d 469; *Bielicki v. Superior Court* (1962) 57 Cal. 2d 602.) The Court in these cases stressed the grab bag character of police action which was not founded on reasonable or probable cause to believe that those spied upon had committed or would commit a crime but which consisted of a regular watch on all persons entering the booths, innocent and guilty alike. By way of silencing any argument that the practice was warranted by past experience as to the likelihood of such criminal activities in this type of place, the first of the two opinions (57 Cal. 2d at p. 609) ended with the telling statement that such a practice by officers would not be sustained on the theory that "if they watch enough people long enough some *malum prohibitum* acts will eventually be discovered." In our case there is even more reason for condemnation of respondents' mass search since private homes were the premises involved. The search was general and exploratory, conducted for the purpose of finding evidence of guilt and addressed to innocent and "suspect" alike and without probable cause. How appropriate it is to paraphrase the statement quoted from *Bielicki, supra,* and say that the authority of those engaging in Operation Bedcheck cannot be sustained on the theory that, if they looked

into enough homes long enough, some so-called "unauthorized" men would eventually be discovered.

On the present record there can be no doubt that the discovery of evidence of crime was a principal objective of the search and that, in any event, in view of respondents' burden of proof, it was not for appellant to establish such an object but for respondents to prove its absence.[2] The Fourth Amendment, moreover, prohibits not only searches aimed at criminal convictions but also those aimed at forfeitures (*Frank v. Maryland* (1959) 359 U.S. 360, 365; *Boyd v. United States,* 116 U.S. 616), and the reasonable conclusion is that termination of public assistance, which was undoubtedly an object of the search in the present case, constitutes such a forfeiture and, therefore, a general exploratory search to find evidence for such termination is as much to be condemned as one for the purpose of discovering evidence of crime. (Cf. *Wirin v. Horrall,* 85 C.A. 2d 497.)

C. The Fact That Persons Receiving Public Assistance Were Involved Did Not Constitute Proper Justification.

Any effort to justify the searches on the theory that the subjects of the search were recipients of public assistance under the program of Aid to Needy Children ("ANC") must fail. The first and simplest reason is that the searches were not necessarily limited to invasion of the privacy of ANC recipients alone. To avail themselves of this justification theory,

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[2]Indeed, respondents would have been under a duty to prosecute any fraud discovered as a result of their findings. (W. & I. Code, secs. 1570-71.)

respondents have the burden of showing that only homes *solely* occupied by recipients of ANC were subject to the search. There is no indication that this was so. It seems obvious that the opposite was true —that of the hundreds of homes searched many were jointly occupied by ANC recipients and others. Indeed, respondents' expectation was that of finding certain persons other than recipients themselves, that is, "unauthorized" men. Thus, even if the outrageous proposition were to be admitted, that recipients of public assistance are a special, inferior breed of citizens, deprived of constitutional protection, this alone could not justify invading the rights of others who were in the subject homes. Certainly, the status of persons occupying homes jointly with recipients of public assistance cannot be worse than that of persons on premises occupied by criminals and, as to the latter class of joint occupants, it is settled that their right of privacy cannot be invaded merely because a search of the premises would be lawful as to the criminal or suspected criminal. (*People v. Shelton* (1964) 60 Cal. 2d 740, 745; *Tompkins v. Superior Court* (1963) 59 Cal. 2d 65, 69.)

There is, moreover, a second reason why this justification must fail. There is abundant authority for the proposition that government cannot compel the divestiture of constitutional rights as a condition to its bestowal of a privilege. This is true even if government is under no duty to grant the privilege at all. Our courts have wisely held that such unconstitutional conditions are void. (*Sherbert v. Verner*

(1963) 374 U. S. 398, 404-406; *Frost Trucking Co. v. R. R. Com.* (1926) 271 U. S. 583; *Steinberg v. U. S.* (1958) 143 Ct. Cl. 1, 163 F. Supp. 590; *American Civil Liberties Union v. Board of Education* (1961) 55 Cal. 2d 167, 171 et seq.; *Danskin v. San Diego Unified School District* (1946) 28 Cal. 2d 536, 545-546; *Housing Authority of the City of Los Angeles v. Cordova* (1955) 130 Cal. App. 2d Supp. 883, 885; *Lawson v. Housing Authority of Milwaukee,* 270 Wis. 269, 70 N.W. 2d 605; see Note, *Unconstitutional Conditions* (1960) 73 Harv. L. Rev. 1595, 1599-1602; cf. *Cramp v. Board of Public Instruction, Orange County, Florida* (1961) 368 U.S. 278, 288; *Torcaso v. Watkins* (1961) 367 U.S. 488, 495-496; *Wieman v. Updegraff* (1952) 344 U.S. 183, 191-192; *Fort v. Civil Service Commission of the County of Alameda* (1964) 61 Cal. 2d 331, 334 et seq.)

Only where the government can show that it has a "compelling," rather than merely a "rational," interest, may it limit those rights. As was said in *Sherbert v. Verner, supra,* 374 U. S. 398 at pp. 406-407, where a Seventh Day Adventist successfully challenged the constitutionality of a restriction denying unemployment benefits to persons who did not work on Saturdays, "No showing merely of a rational relationship to some colorable state interest would suffice; in this highly sensitive constitutional area 'only the gravest abuses, endangering paramount interests, give occation for permissible limitation'." (See also *Gibson v. Florida Legislative Investigation Committee* (1963) 372 U. S. 539, 546; *N.A.A.C.P. v. Button* (1963) 371

U. S. 415, 438-440.) One hopes that not even respondents would be heard to claim that, as compared to criminal activities generally, including crimes of violence, the ANC program in Alameda County gave rise to "the gravest" abuses or a "compelling" governmental interest in abridging fundamental rights.

A third answer to the theory of justification under consideration is that Operation Bedcheck would have to be condemned even if a "compelling" governmental interest were viewed as justifying some unusual limitation on the fundamental rights of recipients of public assistance because of its overbroad character. The principle that, even where a "compelling" interest is involved, limitations on fundamental rights must be imposed with narrow specificity has been expressly or implicitly recognized in the cases cited above, and especially in *Shelton v. Tucker* (1960) 364 U. S. 479, 488-490; *Taley v. State of California* (1960) 362 U. S. 60, 63 et seq.; *Fort v. Civil Service Commission,* 61 Cal. 2d 331, 337-338; *Wollam v. City of Palm Springs* (1963) 59 Cal. 2d 276, 286-288. It is noteworthy in this connection that the Court in *Sherbert* (374 U. S. at p. 407) said it would plainly be incumbent upon the state to "demonstrate that no alternative forms of regulation" would combat the asserted abuses without infringing on First Amendment rights. It merits emphasis that, although the narrow specificity test has usually been applied in connection with the First Amendment, it is undoubtedly applicable to other amendments setting forth fundamental rights, including the right of privacy secured by the Fourth. As

noted above, the defect of overinclusive application was stressed in the two 1962 Fourth Amendment decisions of *Britt v. Superior Court,* 58 Cal. 2d 469, and *Bielicki v. Superior Court,* 57 Cal. 2d 602, where the Court emphasized that the invasion of privacy was not confined to instances of reasonable or probable cause but was of a wholesale character, addressed to innocent and guilty alike. The problem of overbroad enforcement also seems to have been at the root of the recent birth control decision, *Griswold v. Connecticut,* ..... U.S. ..... 14 L. Ed. 2d 510, where the Court said at 516:

> Would we allow the police to search the sacred precincts of marital bedrooms for telltale signs of use of contraceptives? The very idea is repulsive to notions of privacy surrounding the marriage relationship.[3]

When considered in the light of the compelling interest and narrow specificity tests, a search of the type of Operation Bedcheck can only be viewed by reasonable minds, first, with incredulity, and then with outrage. The truth is that no justification for a sudden change in investigative methods has been shown and that Operation Bedcheck was the sorry product of irresponsibility of public servants indifferent to the constitutional rights of the public. Even if there had been a sufficient need for new methods requiring some infringement on the right of privacy as enjoyed by the citizenry in general, there were

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[3]ANC is not limited to families with but one parent. See Welfare & Institutions Code, sec. 1500(c).

obviously available far less drastic measures than a warrantless search of hundreds of homes at 6:30 on a Sunday morning, general and exploratory in character and conducted without regard to reasonable or probable cause or to the rights of the recipients and other persons present in their homes.

D. The Mass Searches Cannot Be Justified on the Theory of Valid Consent.

There is also more than one answer to an effort to show justification for Operation Bedcheck on the theory of valid consent.

First, although respondents went through the gestures of requesting consent to the search by whoever should answer the knock on that early Sunday morning (assumedly the recipient mothers), such gestures, whether or not sufficient to validate the search as to the one answering the door, could not cure the want of consent to, and illegality of, the invasion of the privacy of others in the home. (*People v. Shelton,* 60 Cal. 2d 740, 745, and *Tompkins v. Superior Court,* 59 Cal. 2d 65, 69, discussed above.)

Second, as respondents must have planned upon, the recipient mothers who would assumedly answer the knocks on the doors, could not reasonably be expected to do other than acquiesce under the circumstances, however unwillingly. Under the controlling principles, such an apparent consent could not justify the search.

It is settled that an apparent consent, in order to be considered valid, must be free and voluntary rather

than given in submission to an assertion of authority, whether express or implied, and must be intelligently given, i.e., with a specific understanding of what is being permitted. In order to protect his rights, one is not required to resist the assertion of authority, and any uncertainty as to whether an apparent consent should be treated as valid must be resolved against the party with the burden of persuasion. (E.g. *Johnson v. United States* (1948) 333 U. S. 10; *Amos v. United States* (1921) 255 U. S. 313; *United States v. Marra* (D.C.W.D.N.Y. 1930) 40 F. 2d 271; *People v. Haven* (1963) 59 Cal. 2d 713, 717 et seq.; *Castaneda v. Superior Court* (1963) 59 Cal. 2d 439, 442 et seq.)

Some of the above cases merit close study in the light of the findings in this case. The sole finding relating to consent to the search in this case is set forth in the margin.[4] The method of operation described in that finding is, as a matter of law, insufficient to show a valid consent to a search. Because of the striking similarity between procedure outlined in

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[4]"7. That the Welfare workers taking part in this eligibility investigation were instructed by the Welfare Department to present and identify themselves at the front door of the home of the welfare recipient, indicate the exact purpose of the call and request admission into the house; if the request for such entry was denied, they were directed not to enter the home; if the entry were allowed, they were directed to investigate in the same manner as they would on other occasions as part of a routine home call under the program established for Aid to Needy Children; if the worker was admitted into the home, before he proceeded into any other part of the house, he was to ask for permission so to do from the recipient; that the eligibility investigation was to cover both suspect and non-suspect cases; that Petitioner had a number of suspect cases in his caseload, that is, cases in which eligibility had not been checked for a period of up to six months." (C.T. 42:1-15.)

this finding and the methods condemned in *Johnson v. U.S., supra* (1948) 333 U. S. 10, attention must be directed to the facts of that case. There, the police were directed to a hotel by an informer who advised them that narcotics were being used in one of its rooms. Before entering the room, the arresting officer noticed an odor which he identified as that of opium emanating from the room. The arresting officer knocked on petitioner's door; he identified himself as a police officer, and the door was opened by the petitioner. The officer then stated, "I want to talk to you a little bit." The petitioner stepped back into the room, admitting the police, one of whom stated, "I want to talk to you about this opium smell in the room here." The petitioner denied the existence of such a smell, at which point she was arrested, and the room was searched without further comment from her. The search revealed a quantity of opium and that the petitioner was the sole occupant of the room. In reversing the conviction, the Court held that the search, initiated under color of office and without a warrant, was not consented to by the petitioner but was ". . . granted in submission to authority rather than as an understanding and intentional waiver of a constitutional right." (333 U. S. at p. 13.)

The constitutional standard established by *Johnson* and its companion cases is clear: that mere acquiescence to a search is not consent to a search. The record is devoid of any finding that consent was a necessary prerequisite to a search in this case. The instructions to the welfare workers were to turn back

only if *refused* admission into the home; the recipients were neither advised of the standard of an "understanding and intentional waiver of a constitutional right," nor was it intimated to them that they had any alternative but to submit to a search or submit to a loss of benefits. Entry was to be made in every case where there was no specific denial of entry.

The basis of the cited decisions requiring an informed consent to a search is the avoidance of the "implied coercion" (*Amos v. United States, supra* (1921) 255 U.S. 313, 317) which arises from a knock on the door by an agent of the government. How much more coercion is implied when the knock comes at 6:30 on a Sunday morning and when the caller is a welfare worker seeking the "consent" of a welfare recipient to an "eligibility" investigation. Such persons, by reason of their impoverishment, dependence, and predicted low level of understanding of their rights are not likely to appreciate or assert their constitutional rights. The very subsistence of these persons is dependent upon acquiescence to the conditions and requirements of government agencies, and they are not likely to question the assertion of authority. Moreover, in view of the relationship of trust which good social work is supposed to develop between worker and client, the position of the recipient is not the same as that of a criminal confronted by the call of a police officer.

Two additional points should be stressed. The first is that, where, as here, the circumstances bearing on the validity of consent are essentially uncontradicted,

the reviewing Court is not bound by findings of the tribunals below but is under a duty to make an independent examination of the circumstances and determination of the question. This is the rule with respect to whether a confession is voluntary (*Stroble v. California* (1952) 343 U.S. 181, 190; *People v. Trout* (1960) 54 Cal. 2d 576, 583), and there is no sensible basis for applying a different rule in a case like the present one, where voluntariness is equally at issue. The second point to be stressed is that the purported consent procedure, like the rest of the mass plan appellant was called upon to execute, was designed to apply alike to hundreds of recipients of ANC and must be judged in the light of all of its intended applications, that is, on the basis of its effect upon the most vulnerable of the recipients, not the most strong-willed. (Cf. *Lamont v. Postmaster General* (1965) ..... U.S. ....., 14 L. Ed. 2d 398, 402; *Thornhill v. Alabama* (1940) 310 U.S. 88, 96-99; *Fort v. Civil Service Commission of the County of Alameda* (1964) 61 Cal. 2d 331, 339.)

There can be no doubt as to the vulnerability of a substantial number, if not all, of the persons subjected to Operation Bedcheck. They were not the so-called stable and respectable citizens of our land, who, with the confidence, poise, and pride that comes from education and full and constructive participation in community life, including gainful and meaningful employment, feel they are "as good as anybody else" and are quick to sense and protest injustices inflicted upon them, especially, perhaps, if inflicted by

government. Rather, these persons were among the unfortunate and underprivileged, marginal members of society, relatively cowed, frightened, ignorant, and insecure, uncertain of their rights, dependent for their very subsistence upon the good will of governmental authorities, and thus unlikely to protest actions those in authority deemed fit.

To such persons, the sudden knock on the door at 6:30 of a Sunday morning by those with whom the recipients are accustomed to deal in completely different circumstances would in itself constitute an assertion of momentous governmental business, brooking no interference, and a request of entry would inevitably be understood as a demand, especially when accompanied by a statement of the ominous purpose of the visit. Certainly, all doubt as to the involuntary character of any apparent consent is removed when to this aura of the police raid is added the almost certain threat in the minds of the recipients that refusal of entry would mean the end of the grants of aid upon which their subsistence depended. Whether that threat was express or implied is immaterial, as is the after-the-fact denial by welfare administrators; the recipients were undoubtedly informed previously, if not then, that the continuation of aid was conditioned on cooperation in eligibility investigations. (See, for example, W. & I. Code, secs. 1563, 1571-72.) In such circumstances, valid consent cannot reasonably be found. (See, in addition to the above authorities, Reich, *Midnight Welfare Searches and the Social Security Act* (1963) 72 Yale

L. J. 1347, 1348-1350; cf. *Lynumn v. Illinois* (1963) 372 U. S. 528, 534.)

II. THE MASS SEARCH WAS INVALID BECAUSE IT CONSTITUTED LOCAL ACTION IN A FIELD PREEMPTED BY STATE LAW.

Whether or not it is condemned on the other grounds discussed above, the mass search, initiated by the legislative body of Alameda County and implemented by administrative personnel of the county, was invalid under the doctrine that, where a field has been exclusively occupied by state law, local regulation is in conflict with that law and therefore void. The present scope of that doctrine was fully analyzed in the concurring opinion of the then Chief Justice of California in *In re Lane* (1962) 58 Cal. 2d 99, 106 et seq., where, upon an extensive review of the pertinent decisions, he pointed out:

> "[L]ocal regulations on the matter are invalid if they are in 'conflict' with the state legislation as that term is used in section 11 of article XI of the Constitution . . . [Citations] The word 'conflict' is to be given a broad construction; there may be a conflict even though there is no actual grammatical conflict between the statute and the ordinance; and if it is determined, under the general principles developed by the cases, that the state has occupied the field, any local provisions are deemed to be in conflict with the state legislation. [Citation] . . . It is thus apparent [from many decisions cited and discussed] that the enactment by the state of a comprehensive and detailed general plan or scheme with respect

> to a subject serves, without more, to occupy the field to the exclusion of local regulation. Several decisions of this court antedating those discussed above take the position that state legislation renders ordinances invalid only where there is a direct conflict in terms or an exact duplication and that, therefore, a locality may always impose requirements in addition to those set forth by state legislation on a subject. [Citations] . . . [T]hey have been impliedly overruled by the later decisions to the extent that they rest on the theory that requirements in addition to those set forth in state legislation may always be imposed by a locality. . . . Whether a particular statute or group of statutes is sufficiently comprehensive to show an intent to occupy the entire field is a matter which cannot properly be decided upon the basis of any single, precise test. . . . Determination of the question depends primarily upon an analysis of the statute and a consideration of the facts and circumstances upon which it was intended to operate, and the intent of the Legislature is not to be measured alone by the language used but by the whole purpose and scope of the legislative scheme. [Citation] . . . One of the factors stressed in the decisions is whether or not the subject calls for uniform treatment throughout the state. [Citations]."

In view of the regulations discussed in Appendix A to appellant's opening brief, a not inconsiderable case for the existence of a direct conflict between the local action and state law can be made in the present circumstances. However, even if the plan devised by Alameda County is regarded as supplementary in

character rather than directly conflicting, it seems clear that we are nevertheless confronted with one of those instances of conflict in the broader sense, that is, in the sense of a local attempt to act in a field as to which the state has adopted a comprehensive and detailed general scheme.

As one would expect in regard to a welfare program dealing with a matter of statewide concern and dependent for continued contribution of federal funds upon observance by the state of federal standards, our Legislature has enacted extensive provisions for uniform application throughout the state in regard to the ANC program. An entire part of the Welfare and Institutions Code, embracing many sections, is devoted to the subject (Part 2 of Division 2, sections 1500 et seq.), and virtually every aspect of the program is covered: the purposes and objectives, the duties of the counties and others, eligibility standards, and the role to be played in the administration and enforcement of the program by the counties and others.

Some of the code sections deal with the very subject in issue here, the functions of counties as to continued eligibility, including section 1563, which sets forth in some detail a procedure under which certificates mailed to recipients as frequently as each month are to be filled out by them with respect to various matters such as the "names and status of any other adults living in the home."

Another of the code sections (section 1560) assigns to the State Board of Social Welfare the responsi-

bility of making rules and regulations with respect to the program, including "the administration" of it. These rules and regulations are specifically declared in the section to be "binding" upon the counties. As is illustrated in Appendix A to appellant's opening brief, the Board has exercised its power in some detail with respect to the very subject in controversy.

The present case sadly demonstrates what havoc could be wrought if all the counties in the state were free to pursue, under the guise of supplemental regulation, their respective attitudes toward the ANC program. The Legislature was thus careful to provide for a comprehensive and detailed scheme for uniform application to the exclusion of local meddling. Accordingly, the mass search involved here was invalid from its inception.

CONCLUSION

For the reasons discussed above, it is respectfully urged that the judgment be reversed with directions to enter judgment for appellant as prayed.

Dated, San Francisco, California,
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Respectfully submitted,

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